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California Legislature

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CHAPTER 874

An act to add Section 25950 to the Education Code, and to add Article 10 (commencing with Section 22878) to Chapter 1 of Part 5 of Division 5 of Title 2 of the Government Code, relating to health benefits, 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 25950 is added to the Education Code, to read:

25950. On or before April 1, 2001, the board shall report to the Legislature on a prescription drug program and a program to provide health benefits to retired members. The report shall include an analysis of all potential methods of financing and administering the programs. These shall include, but are not limited to, (1) the system providing those health benefits under contracts with carriers or other entities that administer health benefits plans, (2) reimbursing employers for the costs of providing those health benefits to retired employees, and (3) crediting employers and employing agencies, against the amount contributed pursuant to Section 22950, a monthly amount, adjusted annually, for each retiree the employer or employing agency certifies is enrolled in one or more health care benefits programs administered or sponsored by the employer or employing agency. The report shall include an estimate of the fiscal impact of each program on the system, including administration and program costs, and recommended statutory language to implement each program.

SEC. 2. Article 10 (commencing with Section 22878) is added to Chapter 1 of Part 5 of Division 5 of Title 2 of the Government Code, to read:

Article 10. Provisions for Schools and Agencies

22878. The provisions of this part apply to schools and agencies, as these terms are defined in this article. The purpose of this article is to set forth provisions which may only be used by schools and agencies, as those terms are defined in this article. If schools and agencies choose to follow the provisions of this article, all conflicting provisions of this part shall be superseded. This article shall not apply to any other employer, employee, annuitant, or family member who has, or elects to have, health care coverage pursuant to this part.

22878.1. The definitions in this part shall govern the interpretation of terms in this article, except that the following definitions shall govern the interpretation of these specific terms as used in this article:

(a) ''School'' means any contracting agency that is a special district, school district, county board of education, personnel commission of a school district, a county superintendent of schools, or a community college district.

(b) ''Agency'' means any contracting agency, as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) and any contracting agency that is a public body or agency within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds.

22878.2. (a) A school or agency may by resolution filed with the board deem all permanent or regular employees, except members of the State Teachers' Retirement System, who have an appointment of six months or longer but who are employed on a less than half-time basis, to be employees subject to this part.

(b) An agency or school with employees who are members of the State Teachers' Retirement System may by resolution filed with the board deem any of the following to be employees subject to this part:

(1) Regular, permanent, probationary, or temporary employees or substitutes who have an appointment for a semester, or for six months, or for half of the school year or longer, but are employed on a less than a half-time basis.

(2) Substitutes who have an appointment for 100 days or more in the school year.

22878.3. As used in this part, the term ''annuitant'' shall include:

(a) A family member of a deceased retired member of the State Teachers' Retirement System who retired within 120 days of separation from employment, and who prior to his or her death, received a retirement allowance that did not provide for a survivor allowance to family members and who elects coverage as an annuitant prior to January 1, 2003. This subdivision shall not apply to any family member of a retired member of the State Teachers' Retirement System who retired on or after January 1, 2003 from a school contracting under this part prior to January 1, 2001.

(b) A family member of a deceased retired member of the State Teachers' Retirement System who retired within 120 days of separation from employment, who retired before the member's school elected to contract for health benefit coverage under this part, and who, prior to his

or her death, received a retirement allowance that did not provide for a survivor allowance to family members and who elects coverage as an annuitant within one calendar year from the date that the member's school elected to contract for health benefit coverage under this part.

SEC. 3. At the request of the Teachers' Retirement Board, the Public Employees' Retirement System may submit a proposal to administer a health benefits program for retired members of the State Teachers' Retirement System and their dependents.

CHAPTER 875

An act to amend Sections 1777.5, 1777.7, and 3099 of the Labor Code, relating to employment, 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 1777.5 of the Labor Code is amended to read:

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected.

However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. ''Apprenticeable craft or trade,'' as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, ''contractor'' includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end

of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(*l*) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint

apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of each fiscal year, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of administering this subdivision.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the division in administering this subdivision.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or

those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

SEC. 2. Section 1777.7 of the Labor Code is amended to read:

1777.7. (a) (1) A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Chief, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Chief may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the Chief to have knowingly committed a serious violation of any provision of Section 1777.5, the Chief may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Chief becomes a final order of the Administrator of Apprenticeship.

(c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Chief imposing the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the determination of debarment or civil penalty. A copy of this report shall also be served on the Chief. If the Administrator does not receive a timely request for

review of the determination of debarment or civil penalty made by the Chief, the order shall become the final order of the Administrator.

(2) Within 20 days of the timely receipt of a request for review, the Chief shall provide the contractor, subcontractor, or responsible officer the opportunity to review any evidence the Chief may offer at the hearing. The Chief shall also promptly disclose any nonprivileged documents obtained after the 20-day time limit at a time set forth for exchange of evidence by the Administrator.

(3) Within 90 days of the timely receipt of a request for review, a hearing shall be commenced before the Administrator or an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(4) Within 45 days of the conclusion of the hearing, the Administrator shall issue a written decision affirming, modifying, or dismissing the determination of debarment or civil penalty. The decision shall contain a statement of the factual and legal basis for the decision and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party that the party has filed with the Administrator. Within 15 days of issuance of the decision, the Administrator may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(5) An affected contractor, subcontractor, or responsible officer who has timely requested review and obtained a decision under paragraph (4) may obtain review of the decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision. If no timely petition for a writ of mandate is filed, the decision shall become the final order of the Administrator. The decision of the Administrator shall be affirmed unless the petitioner shows that the Administrator abused his or her discretion. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(6) The Chief may certify a copy of the final order of the Administrator and file it with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other

judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination by the Chief imposing a penalty under this section shall, upon receipt of a certified copy of a final order of the Administrator, promptly transmit the withheld funds, up to the amount of the certified order, to the Administrator.

(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The Chief shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the party has committed other violations of Section 1777.5.

(3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

If a party seeks review of a decision by the Chief to impose a monetary penalty or period of debarment, the Administrator shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council. The Administrator may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.

SEC. 3. Section 3099 of the Labor Code is amended to read:

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

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

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

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

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

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

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

CHAPTER 876

An act to amend Sections 98.1, 98.2, 203.1, 218.5, 226, 350, 351, and 1174 of, and to add Sections 218.6, and 226.7 to, the Labor Code, relating to employment.

[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 98.1 of the Labor Code is amended to read:

98.1. (a) Within 15 days after the hearing is concluded, the Labor Commissioner shall file in the office of the division a copy of the order, decision, or award. The order, decision, or award shall include a summary of the hearing and the reasons for the decision. Upon filing of the order, decision, or award, the Labor Commissioner shall serve a copy of the decision personally or by first-class mail on the parties. The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this chapter shall result in the decision or award becoming final and enforceable as a judgment by the appropriate municipal or superior court, in accordance with the appropriate rules of jurisdiction.

(b) For the purpose of this section, an award shall include any sums found owing, damages proved, and any penalties awarded pursuant to this code.

(c) All awards granted pursuant to a hearing under this chapter shall accrue interest on all due and unpaid wages at the same rate as prescribed by subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue until the wages are paid from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

SEC. 2. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the municipal or superior court, in accordance with the appropriate rules of jurisdiction, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure shall be applicable.

(b) Whenever an employer files an appeal pursuant to this section, the employer shall post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall

provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, shall be forfeited to the employee.

(c) If the party seeking review by filing an appeal to the municipal or superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the municipal or superior court, in accordance with the appropriate rules of jurisdiction, of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered shall have the same force and effect as, and shall be subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(f) In order to ensure that judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (a) of Section 116.830 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the

judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(g) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award that has become final upon good cause appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(h) When a judgment is satisfied in fact, otherwise than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(i) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(j) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, shall be entitled to court costs and reasonable attorney fees for enforcing the judgment that is rendered pursuant to this section.

SEC. 3. Section 203.1 of the Labor Code is amended to read:

203.1. If an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced. However, those wages and fringe benefits shall not continue for more than 30 days and this penalty shall not apply if the employer can establish to the satisfaction of the Labor Commissioner or an appropriate court of law that the violation of this section was unintentional. This penalty also shall not apply in any case in which an employee recovers the service charge authorized by Section 1719 of the Civil Code in an action brought by the employee thereunder.

SEC. 4. Section 218.5 of the Labor Code is amended to read:

218.5. In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. This section shall not apply to an action brought by the Labor Commissioner. This section shall not apply to a surety issuing a bond pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code or to an action to enforce a mechanics lien brought under Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code.

This section does not apply to any action for which attorney's fees are recoverable under Section 1194.

SEC. 5. Section 218.6 is added to the Labor Code, to read:

218.6. In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

SEC. 6. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by this section

shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(b) Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and shall be entitled to an award of costs and reasonable attorney's fees.

(c) This section does not apply to the state, or any city, county, city and county, district, or any other governmental entity.

SEC. 7. Section 226.7 is added to the Labor Code, to read:

226.7. (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

SEC. 8. Section 350 of the Labor Code is amended to read:

350. As used in this article, unless the context indicates otherwise:

(a) ''Employer'' means every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis.

(b) ''Employee'' means every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.

(c) ''Employing'' includes hiring, or in any way contracting for, the services of an employee.

(d) ''Agent'' means every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees.

(e) ''Gratuity'' includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity.

(f) ''Business'' means any business establishment or enterprise, regardless of where conducted.

SEC. 9. Section 351 of the Labor Code is amended to read:

351. No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

SEC. 10. Section 1174 of the Labor Code is amended to read:

1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information that the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

SEC. 11. The amendments to Section 218.5 of the Labor Code made by Section 4 of this act do not constitute a change in, but are declaratory of, the existing law, and these amendments are intended to reflect the holding of the Court of Appeal in Early v. Superior Court (2000) 79 Cal.App.4th 1420.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 877

An act to add Section 1682.7 to the Labor Code, relating to farm labor contractors.

[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 1682.7 is added to the Labor Code, to read:

1682.7. The Labor Commissioner shall ensure that the office maintained in Fresno has suitable facilities and sufficient personnel for the examination and licensing of farm labor contractors and for the processing of complaints against farm labor contractors or any agent of a farm labor contractor.

CHAPTER 878

An act to amend Section 1701 of the Labor Code, relating to advance-fee talent service, 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. Section 1701 of the Labor Code is amended to read:

1701. For purposes of this chapter, the following terms have the following meanings:

(a) (1) ''Advance fee'' means any fee due from or paid by an artist prior to the artist obtaining actual employment as an artist or prior to the artist receiving actual earnings as an artist or that exceeds the actual earnings received by the artist as an artist.

(2) ''Advance fee'' does not include reimbursements for out-of-pocket costs actually incurred by the payee on behalf of the artist for services rendered or goods provided to the artist by an independent third party if all of the following conditions are met:

(A) The payee has no direct or indirect financial interest in the third party.

(B) The payee does not accept any referral fee or other consideration for referring the artist.

(C) The services rendered or goods provided for the out-of-pocket costs are not represented to be, and are not, a condition for the payee to register or list the artist with the payee.

(D) The payee maintains adequate records to establish that the amount to be reimbursed was actually advanced or owed to a third party and that the third party is not a person in which the payee has a direct or indirect financial interest or from which the payee receives any consideration for referring the artist.

(E) The burden of producing evidence to support a defense based upon an exemption or an exception provided in this paragraph is upon the person claiming it.

(b) ''Advance-fee talent service'' means a person who charges, attempts to charge, or receives an advance fee from an artist for one or more of the following:

(1) Procuring, offering, promising, or attempting to procure employment or engagements for the artist.

(2) Managing or directing the development or advancement of the artist's career as an artist.

(3) Career counseling, career consulting, vocational guidance, aptitude testing, evaluation, or planning, in each case relating to the preparation of the artist for employment as an artist.

(c) ''Artist'' or ''artists'' means persons who seek to become or are actors or actresses rendering services on the legitimate stage or in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, extras, and other artists or persons rendering professional services in motion picture, theatrical, radio, television, and other entertainment enterprises.

(d) ''Fee'' means any money or other valuable consideration paid or promised to be paid by or for an artist for services rendered or to be rendered by any person conducting the business of an advance-fee talent service.

(e) ''Person'' means any individual, company, society, firm, partnership, association, corporation, limited liability company, trust, or other organization.

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 protect the public from fraud at the earliest possible time, it is necessary for this act to go into immediate effect.

CHAPTER 879

An act to amend Section 3515.7 of, and to add Section 3517.8 to, the Government Code, relating to state employment relations.

[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 3515.7 of the Government Code is amended to read:

3515.7. (a) Once an employee organization is recognized as the exclusive representative of an appropriate unit it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction.

(b) The state employer shall furnish the recognized employee organization with sufficient employment data to allow the organization

to calculate membership fees and the appropriate fair share fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee. These fees shall be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine readable data. Fair share fee deductions shall continue until the effective date of a successor agreement or implementation of the state's last, best, and final offer, whichever occurs first. The Controller shall retain, from the fair share fee deduction, an amount equal to the cost of administering the provisions of this section. The state employer shall not be liable in any action by a state employee seeking recovery of, or damages for, improper use or calculation of fair share fees.

(c) Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the State Board of Control for receipt of charitable contributions by payroll deductions.

(d) A fair share fee provision in a memorandum of understanding which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at anytime during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during the term. If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote in a manner which it shall prescribe. Notwithstanding this subdivision, the state employer and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on a fair share fee provision.

(e) Every recognized employee organization which has agreed to a fair share fee provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees in the unit, within 90 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or comparable officers. In the event of failure of compliance

with this section, any employee in the unit may petition the board for an order compelling this compliance, or the board may issue a compliance order on its own motion.

(f) If an employee who holds conscientious objections pursuant to subdivision (c) requests individual representation in a grievance, arbitration, or administrative hearing from the recognized employee organization, the recognized employee organization is authorized to charge the employee for the reasonable cost of the representation.

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

SEC. 2. Section 3517.8 is added to the Government Code, to read:

3517.8. (a) If a memorandum of understanding has expired, and the Governor and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, including, but not limited to, all provisions that supersede existing law, any arbitration provisions, any no strike provisions, any agreements regarding matters covered in the Fair Labor Standards Act of 1938 (Chapter 8 (commencing with Section 201) of Title 29 of the United States Code), and any provisions covering fair share fee deduction consistent with Section 3515.7.

(b) If the Governor and the recognized employee organization reach an impasse in negotiations for a new memorandum of understanding, the state employer may implement any or all of its last, best, and final offer. Any proposal in the state employer's last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature for approval and, if approved, shall be controlling without further legislative action, notwithstanding Sections 3517.5, 3517.6, and 3517.7.. Implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if any circumstances change, and does not waive any rights that the recognized employee organization has under this chapter.

CHAPTER 880

An act to amend Section 22508 of the Education Code and to amend Section 20309 of 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 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district or community college district, or a county superintendent, or who becomes employed by the state in a position described in subdivision (b), to perform service that requires membership in a different public retirement system, and who is not excluded from membership in that public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) Subdivision (a) shall apply to a member who becomes employed by the state only if the member is also one of the following:

(1) Represented by a state bargaining unit that represents educational consultants, professional educators, or librarians employed by the state.

(2) Excluded from the definition of ''state employee'' in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(3) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(c) A member of the Public Employees' Retirement System who is employed by a school district, community college district, a county superintendent, or the State Department of Education and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of this plan may elect to have that subsequent service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program pursuant to Section 20309 of the Government Code. If the election is made, creditable service performed for the employer after the

date of hire shall be subject to coverage by the Public Employees' Retirement System.

(d) An election made by a member pursuant to this section shall be irrevocable.

SEC. 2. Section 20309 of the Government Code is amended to read:

20309. (a) A member of the system who is employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education and who subsequently is employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan, may elect to retain coverage by this system for that subsequent service. An election to retain coverage under this system shall be submitted in writing by the member to the system on a form prescribed by the system, and a copy of the election shall be submitted to the State Teachers' Retirement System, within 60 days after the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan. A member who elects to retain coverage under this system pursuant to this section shall be deemed to be a school member while employed by a school employer.

(b) Any election made pursuant to this section shall become effective as of the first day of employment in the position that qualified the member to make an election.

CHAPTER 881

An act to amend Section 1720 of the Labor Code, relating to public contracts.

[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 1720 of the Labor Code is amended to read:

1720. As used in this chapter, ''public works'' means:

(a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this subdivision, ''construction'' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(b) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. ''Public work'' shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(c) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(e) The laying of carpet in a public building done under contract and paid for in whole or part out of public funds.

(f) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

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 882

An act to amend Section 21703 of, and to add Sections 20479.5 and 31676.16 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 20479.5 is added to the Government Code, to read:

20479.5. Notwithstanding Section 20479, where a memorandum of understanding entered prior to August 11, 1988, provided a different retirement benefit formula for a subgroup of employees in a member classification, that contracting agency may, pursuant to a memorandum of understanding, amend its contract to provide the same retirement

formula applicable to that subgroup to all or part of the contracting agency's other employees in the same member classification.

SEC. 2. Section 21703 of the Government Code is amended to read:

21703. All development and administration costs of the alternative retirement plan authorized by this chapter shall be paid by school employers and members, as determined by the board.

SEC. 3. Section 31676.16 is added to the Government Code, to read:

31676.16. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50	0.713
50 1/4	0.725
50 1/2	0.737
50 3/4	0.749
51	0.761
51 1/4	0.775
51 1/2	0.788
51 3/4	0.801
52	0.814
52 1/4	0.828
52 1/2	0.843
52 3/4	0.857
53	0.871
53 1/4	0.886
53 1/2	0.902
53 3/4	0.917

54	0.933
54 1/4	0.950
54 1/2	0.966
54 3/4	0.983
55	1.000
55 1/4	1.007
55 1/2	1.013
55 3/4	1.020
56	1.026
56 1/4	1.033
56 1/2	1.039
56 3/4	1.046
57	1.052
57 1/4	1.059
57 1/2	1.065
57 3/4	1.072
58	1.078
58 1/4	1.085
58 1/2	1.091
58 3/4	1.098
59	1.105
59 1/4	1.111
59 1/2	1.118
59 3/4	1.124
60	1.131
60 1/4	1.137
60 1/2	1.144
60 3/4	1.150
61	1.157
61 1/4	1.163
61 1/2	1.170
61 3/4	1.176
62	1.183
62 1/4	1.189
62 1/2	1.196
62 3/4	1.202
63 and over	1.209

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

CHAPTER 883

An act to amend Section 5402 of, and to add Section 3212.9 to, the Labor Code, relating to workers' compensation.

[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 3212.9 is added to the Labor Code, to read:

3212.9. In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, the term ''injury'' includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the

requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

SEC. 2. Section 5402 of the Labor Code is amended to read:

5402. (a) Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.

(b) If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.

CHAPTER 884

An act to amend Sections 11664 and 11750 of the Insurance Code, relating to workers' compensation, 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. Section 11664 of the Insurance Code is amended to read:

11664. (a) This section applies only to policies of workers' compensation insurance.

(b) A notice of nonrenewal shall be in writing and shall be delivered or mailed to the producer of record and to the named insured at the mailing address shown on the policy. Subdivision (a) of Section 1013 of the Code of Civil Procedure shall be applicable if the notice is mailed.

(c) An insurer, at least 30 days, but not more than 120 days, in advance of the end of the policy period, shall give notice of nonrenewal, and the reasons for the nonrenewal, if the insurer intends not to renew the policy.

(d) If an insurer fails to give timely notice required by subdivision (c), the policy of insurance shall be continued, with no change in its premium rate, for a period of 60 days after the insurer gives the notice.

(e) A notice of nonrenewal shall not be required in any of the following situations:

(1) The transfer of, or renewal of, a policy without a change in its terms or conditions or the rate on which the premium is based between insurers that are members of the same insurance group.

(2) The policy has been extended for 90 days or less, if the notice required in subdivision (c) has been given prior to the extension.

(3) The named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.

(4) The policy is for a period of no more than 60 days and the insured is notified at the time of issuance that it may not be renewed.

(5) The named insured requests a change in the terms or conditions or risks covered by the policy within 60 days prior to the end of the policy period.

(6) The insurer has made a written offer to the insured to renew the policy at a premium rate increase of less than 25 percent.

(A) If the premium rate in the governing classification for the insured is to be increased 25 percent or greater and the insurer intends to renew the policy, the insurer shall provide a written notice of a renewal offer not less than 30 days prior to the policy renewal date. The governing classification shall be determined by the rules and regulations established in accordance with subdivision (c) of Section 11750.3.

(B) For purposes of this section, ''premium rate'' means the cost of insurance per unit of exposure prior to the application of individual risk variations based on loss or expense considerations such as scheduled rating and experience rating.

(f) After an insured has received a notice of nonrenewal, upon receiving a written request from the insured or the agent or broker of record on the nonrenewed policy, an insurer shall provide a premium and loss history report for the account's tenure or the past three years, whichever is shorter, plus loss experience during the current policy year, within 10 business days of receiving the request.

SEC. 2. Section 11750 of the Insurance Code is amended to read:

11750. (a) The purpose of this article is to promote the public welfare by regulating concert of action between insurers in collecting and tabulating rating information and other data that may be helpful in the making of adequate pure premium rates for workers' compensation insurance and for employers liability insurance incidental thereto and written in connection therewith for all admitted insurers and in submitting them to the commissioner for approval; to authorize and regulate the existence and cooperation of qualified rating organizations to one of which each workers' compensation insurer shall belong; to authorize and regulate cooperation between insurers, rating organizations and advisory organizations in ratemaking and other

related matters to the end that the purposes of this chapter may be complied with and carried into effect.

(b) Notwithstanding any other provision of law, within 60 days of receiving an advisory pure premium rate filing made pursuant to subdivision (b) of Section 11750.3, the Insurance Commissioner shall hold a public hearing, and within 30 days of the conclusion of the hearing, approve, disapprove, or modify the proposed rate.

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 employers begin to receive clear notification as soon as possible on whether their workers' compensation insurance rates are being increased or their policies are being canceled, it is necessary for this act to take effect immediately.

CHAPTER 885

An act to amend Section 220 of the Labor Code, relating to employment.

[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 220 of the Labor Code is amended to read:

220. (a) Sections 201.5, 201.7, 203.1, 203.5, 204, 204a, 204b, 204c, 204.1, 205, and 205.5 do not apply to the payment of wages of employees directly employed by the State of California. Except as provided in subdivision (b), all other employment is subject to these provisions.

(b) Sections 200 to 211, inclusive, and Sections 215 to 219, inclusive, do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation. All other employments are subject to these provisions.

CHAPTER 886

An act to repeal and add Sections 44031 and 87031 of the Education Code, to add Sections 18001, 36501.5, and 53060.3 to, and to repeal and

add Section 31011 of, the Government Code, and to repeal and add Section 1198.5 of the Labor Code, relating to inspection of personnel files.

[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 44031 of the Education Code is repealed.

SEC. 2. Section 44031 is added to the Education Code, to read:

44031. (a) Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

(b) In addition to subdivision (a), all of the following shall apply to an employee of a school district:

(1) Information of a derogatory nature shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. The employee shall have the right to enter, and have attached to any derogatory statement, his or her own comments. The review shall take place during normal business hours and the employee shall be released from duties for this purpose without salary reduction.

(2) The employee shall not have the right to inspect personnel records at a time when the employee is actually required to render services to the district.

(3) A noncredentialed employee shall have access to his or her numerical scores obtained as a result of a written examination.

(4) Except as provided in paragraph (3), nothing in this section shall entitle an employee to review ratings, reports, or records that (A) were obtained prior to the employment of the person involved, (B) were prepared by identifiable examination committee members, or (C) were obtained in connection with a promotional examination.

SEC. 3. Section 87031 of the Education Code is repealed.

SEC. 4. Section 87031 is added to the Education Code, to read:

87031. (a) Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

(b) In addition to subdivision (a), all of the following shall apply to an employee of a school district:

(1) Information of a derogatory nature shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. The employee shall have the right to enter, and have attached to any derogatory statement, his or her own comments. The review shall take place during normal business hours and the employee shall be released from duty for this purpose without salary reduction.

(2) The employee shall not have the right to inspect personnel records at a time when the employee is actually required to render services to the district.

(3) Nothing in this section shall entitle an employee to review ratings, reports, or records that (A) were obtained prior to the employment of the person involved, (B) were prepared by identifiable examination committee members, or (C) were obtained in connection with a promotional examination.

SEC. 5. Section 18001 is added to the Government Code, to read:

18001. Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

SEC. 6. Section 31011 of the Government Code is repealed.

SEC. 7. Section 31011 is added to the Government Code, to read:

31011. Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

SEC. 8. Section 36501.5 is added to the Government Code, to read:

36501.5. Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code

SEC. 9. Section 53060.3 is added to the Government Code, to read:

53060.3. (a) Every employee of a local agency has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

(b) As used in this section:

(1) ''City'' means any city or municipal corporation, whether general law city or charter city.

(2) ''County'' means any county, whether general law county or charter county, including a city and county.

(3) ''Local agency'' means any city, county, city and county, special district, authority, community redevelopment agency, or other political subdivision of the state.

SEC. 10. Section 1198.5 of the Labor Code is repealed.

SEC. 11. Section 1198.5 is added to the Labor Code, to read:

1198.5. (a) Every employee has the right to inspect the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available to the employee at reasonable intervals and at reasonable times. Except as provided in paragraph (3) of subdivision (c), the employer shall not be required to make those personnel records available at a time when the employee is actually required to render service to the employer.

(c) The employer shall do one of the following:

(1) Keep a copy of each employee's personnel records at the place where the employee reports to work.

(2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request.

(3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

(d) The requirements of this section shall not apply to:

(1) Records relating to the investigation of a possible criminal offense.

(2) Letters of reference.

(3) Ratings, reports, or records that were:

(A) Obtained prior to the employee's employment.

(B) Prepared by identifiable examination committee members.

(C) Obtained in connection with a promotional examination.

(4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights, Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.

(5) Employees of agencies subject to the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(e) The Labor Commissioner may adopt regulations that determine the reasonable times and reasonable intervals for the inspection of records maintained by an employer that is not a public agency.

(f) If a public agency has established an independent employee relations board or commission, an employee shall first seek relief regarding any matter or dispute relating to this section from that board or commission before pursuing any available judicial remedy.

(g) In enacting this section, it is the intent of the Legislature to establish minimum standards for the inspection of personnel records by employees. Nothing in this section shall be construed to prevent the establishment of additional rules for the inspection of personnel records that are established as the result of agreements between an employer and a recognized employee organization.

SEC. 12. In adding Sections 36501.5 and 53060.3 to, and in repealing and adding Section 31011 of, the Government Code by this act, it is the intent of the Legislature that those sections, in addition to applying to a general law city or county, as appropriate, also apply to a charter city or a charter county, including a city and county. The Legislature further finds and declares that the right of employees to inspect personnel records is a fundamental right of employment and, as such, constitutes an issue of statewide concern and is not a municipal affair.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains

costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 887

An act to amend Section 3212.1 of the Labor Code, relating to workers' compensation.

[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 3212.1 of the Labor Code is amended to read:

3212.1. (a) This section applies to active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments: (1) a fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision, (2) a fire department of the University of California and the California State University, (3) the Department of Forestry and Fire Protection, and (4) a county forestry or firefighting department or unit. This section also applies to peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.

(b) The term ''injury,'' as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(c) The compensation that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption

shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) The amendments to this section enacted during the 1999 portion of the 1999–2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

CHAPTER 888

An act to add and repeal Section 60233.5 of, and to add Part 8 (commencing with Section 60600) to Division 18 of, the Water Code, relating to water.

[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) In December 1999, the State Auditor released a report entitled ''Water Replenishment District of Southern California: Weak Policies and Poor Planning Have Led to Excessive Water Rates and Questionable Expenses.''

(b) The State Auditor concluded in its report that the Water Replenishment District of Southern California has accumulated an unwarranted financial surplus by consistently overestimating the amount that the district collects from ratepayers for water replenishment and clean water programs. The district has not taken into consideration unused cash balances to offset the high replenishment assessments, and has maintained excessive cash reserves. The district has been unable to explain how much of the financial surplus is attributable to capital improvement projects, and has employed a flawed process for determining the economic feasibility of its capital projects.

(c) The State Auditor also concluded in its report that the district's management decisions were negligent and inadequate in light of its fiduciary responsibilities and administrative functions. The district has failed to implement sound contracting practices, including contracting for construction, materials, equipment, supplies, and professional services. The board of the district had failed to exercise control over

administrative policy regarding staff positions, personnel costs, and consulting needs.

(d) To ensure that the people who are served by the district are protected from the excessive rates and benefit from appropriate control on contracting policies, maintenance and operation expenses, and discretionary spending, and to ensure that the district conducts its meetings and performs its business in a professional manner, it is necessary to enact reforms that implement the recommendations set forth in the State Auditor's report.

(e) The district's actions have not been responsive to the district's constituents. It is the intent of the Legislature to review the governance structure of the district and to create a governance structure that is responsive to the needs of the district's constituents.

SEC. 2. Section 60233.5 is added to the Water Code, to read:

60233.5. (a) This section applies to the Water Replenishment District of Southern California.

(b) (1) The State Auditor shall perform an audit with regard to the operations and management of the district.

(2) The audit shall include an evaluation of the extent to which the district has complied with the recommendations of the report prepared by the State Auditor, dated December 1999, relating to the district.

(3) The State Auditor shall prepare and submit to the Legislature a report that includes its findings and recommendations resulting from the audit performed pursuant to this subdivision.

(c) On or after January 1, 2001, the district may not incur indebtedness.

(d) The district may increase its annual water replenishment district assessment only to reflect increases in the Consumer Price Index, for the Los Angeles-Long Beach statistical area, plus 1 percent, not to exceed 5 percent above the water replenishment assessment imposed in the previous year.

(e) The district shall pay for any capital project undertaken by the district with existing reserves or with funds generated from the imposition of water replenishment assessment.

(f) (1) The Central Basin Water Association and the West Basin Water Association shall appoint six professionals with expertise relating to water to a technical advisory committee.

(2) The district shall consult with the technical advisory committee for the purpose of evaluating projects proposed by the district, making recommendations to the board of the district, and establishing criteria relating to the construction of projects for water quality improvement purposes.

(3) The district shall maintain records regarding all proposed projects, the recommendations of the technical advisory committee, and

the final decisions made by the board of the district with regard to those projects.

(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. 3. Part 8 (commencing with Section 60600) is added to Division 18 of the Water Code, to read:

PART 8. COMPETITIVE BIDDING

60600. This part applies to contracts by water replenishment districts established pursuant to this division.

60602. Before making any contract totaling twenty-five thousand dollars ($25,000) or more within any 12-month period, the district shall advertise for bids.

60604. When work is to be done, the district shall give notice calling for bids by publication in a newspaper of general circulation in the county once a week for four consecutive weeks.

60606. If less than the whole work provided for in the plans and specifications is to be done, the portion to be done must be particularly described in the notice.

60608. The notice shall set forth all of the following information:

(a) Plans and specifications of the work to be done can be seen at the office of the district.

(b) The board will receive sealed bids.

(c) The contract will be let to the lowest responsible bidder.

(d) The bids will be opened in public at a given time and place.

60610. (a) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the district.

(3) A certified check made payable to the district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the district.

(b) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

60612. The board may do any of the following:

(a) Let the work to the lowest responsible bidder.

(b) Reject any or all bids and readvertise for proposals.

(c) Proceed to construct the work under its own superintendence.

60614. In case of an emergency, if notice for bids to let contracts will not be given, the district shall comply with Chapter 2.5 (commencing with Section 22050) of the Public Contract Code.

60616. Contracts for the purchase of materials only shall be awarded to the lowest responsible bidder, except that the board may reject any or all bids for the furnishing of materials only and thereafter either readvertise for bids or solicit offers from not less than three responsible persons to furnish materials.

60618. Upon receipt of an offer for a less price than that specified in the lowest rejected bid, the board may enter into a contract for the furnishing of the materials with the person who has offered them at the lowest price.

60620. Any person to whom a contract is awarded shall enter into a bond, to be approved by the district, payable to the district for its use, for 25 percent of the amount of the contract price, conditioned for the full and faithful performance of the contract. The work shall be done under the direction and to the satisfaction of, and be approved by, the district.

60622. All contracts and other documents executed by the district shall be signed by the president and the secretary.

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

SEC. 5. This act shall become operative only if Senate Bill 1979 of the 1999–2000 Regular Session is enacted and becomes operative on or before January 1, 2001.

CHAPTER 889

An act to amend Section 51238.3 of, and to add Section 51284.1 to, the Government Code, relating to land use.

[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 51238.3 of the Government Code is amended to read:

51238.3. (a) The requirements of Sections 51238.1 and 51238.2 shall not apply to compatible uses for which an application was submitted to the city or county prior to June 7, 1994, provided that the use constituted a ''compatible use'' as that term was defined by this chapter either at the time the application was submitted, or at the time the Williamson Act contract was signed with respect to the subject contract lands, whichever is later.

(b) Neither shall the requirements of Sections 51238.1 and 51238.2 apply to land uses of contracted lands in place prior to June 7, 1994, that constituted a ''compatible use'' as the term ''compatible use'' was defined by this chapter either at the time the use was initiated, or at the time the Williamson Act contract was signed with respect to the subject contract lands, whichever is later.

(c) (1) Neither shall the requirements of Sections 51238.1 and 51238.2 apply to uses that are expressly specified within the contract itself prior to June 7, 1994, and that constituted a ''compatible use'' as the term ''compatible use'' was defined by this chapter at the time that Williamson Act contract was signed with respect to the subject contract lands, or at the time the contract was amended to include the uses, whichever is later. For purposes of this subdivision, the requirements of Sections 51238.1 and 51238.2, effective January 1, 1995, shall apply to contracts for which contract nonrenewal was initiated and was withdrawn after January 1, 1995.

(2) For purposes of this chapter, a compatible use is considered to be expressly specified within the contract only if it is specifically enumerated within the four corners of the Williamson Act contract either without the benefit of referenced documents, or with respect to Williamson Act contracts signed on or before June 7, 1997, with the benefit of referenced documents as those documents existed at the time the Williamson Act contract was initially signed. This subdivision shall be narrowly construed to be consistent with the purposes of this chapter.

SEC. 2. Section 51284.1 is added to the Government Code, to read:

51284.1. (a) When a landowner petitions a board or council for the tentative cancellation of a contract and when the board or council accepts the application as complete pursuant to Section 65943, the board or council shall immediately mail a notice to the Director of Conservation. The notice shall include all of the following:

(1) A copy of the petition.

(2) A copy of the contract.

(3) A general description, in text or by diagram, of the land that is the subject of the proposed cancellation.

(4) The deadline for submitting comments regarding the proposed cancellation. That deadline shall be consistent with the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7), but in no case less than 30 days prior to the scheduled action by the board or council.

(b) The Director of Conservation shall review the proposed cancellation and submit comments to the board or council by the deadline specified in paragraph (4) of subdivision (a). Any comments submitted shall advise the board or council on the findings required by Section 51282 with respect to the proposed cancellation.

(c) Prior to acting on the proposed cancellation, the board or council shall consider the comments by the Director of Conservation, if submitted.

CHAPTER 890

An act to amend Sections 39510, 39512.5, 39513, 39515, 39604, 39671, 39807, 40162, 40450, 40452, 40454, 40500.1, 40503, 40515, 40521, 40709.7, 40717.5, 41261, 41500, 41500.5, 41600, 41865, 42301.5, 42301.9, 42314, 42314.5, and 42405.1 of, to repeal and add Section 39016.5 of, and to repeal Sections 40416, 40484, 40524, 40962, 41212, 41242, 41263, 41507, 41518, 41519, 41520, 41704.5, 41900, and 41981 of, the Health and Safety Code, relating to air resources.

[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 39016.5 of the Health and Safety Code is repealed.

SEC. 2. Section 39016.5 is added to the Health and Safety Code, to read:

39016.5. ''Bureau'' means the Bureau of Automotive Repair in the Department of Consumer Affairs.

SEC. 3. Section 39510 of the Health and Safety Code is amended to read:

39510. (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 11 members.

(b) The members shall be appointed by the Governor, with the consent of the Senate, on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems. Six members shall have the following qualifications:

(1) One member shall have training and experience in automotive engineering or closely related fields.

(2) One member shall have training and experience in chemistry, meteorology, or related scientific fields, including agriculture or law.

(3) One member shall be a physician and surgeon or an authority on health effects of air pollution.

(4) Two members shall be public members.

(5) One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air pollution control.

(c) Five members shall be board members from districts who shall reflect the qualitative requirements of subdivision (b) to the extent practicable. Of these five members, one shall be a board member from the south coast district, one shall be a board member from the bay district, one shall be a board member from the San Joaquin Valley Unified Air Pollution Control District or, if the unified district is abolished, from the San Joaquin Valley Air Quality Management District if created pursuant to Section 5 of Chapter 915 of the Statutes of 1994, one shall be a board member from the San Diego County Air Pollution Control District, and one shall be a board member of any other district.

(d) Any vacancy shall be filled by the Governor within 30 days of the date on which it occurs. If the Governor fails to make an appointment for any vacancy within the 30-day period, the Senate Committee on Rules may make the appointment to fill the vacancy in accordance with this section.

(e) While serving on the state board, all members shall exercise their independent judgment as officers of the state on behalf of the interests of the entire state in furthering the purposes of this division. No member of the state board shall be precluded from voting or otherwise acting upon any matter solely because that member has voted or acted upon the matter in his or her capacity as a member of a district board, except that no member of the state board who is also a member of a district board shall participate in any action regarding his or her district taken by the state board pursuant to Sections 41503 to 41505, inclusive.

(f) Notwithstanding subdivision (e) of Section 1 of Chapter 1201 of the Statutes of 1991, this section shall become operative on January 1, 1994.

SEC. 4. Section 39512.5 of the Health and Safety Code is amended to read:

39512.5. (a) With respect to the members appointed pursuant to subdivision (c) of Section 39510, those members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for expenses is not otherwise provided or payable by another public agency or agencies. Each elected public official member of the state board shall receive one hundred dollars ($100) for each day, or portion thereof, but not to exceed one thousand dollars ($1,000) in any month, attending meetings of the state board or committees thereof, or upon authorization of the state board while on official business of the state board.

(b) Reimbursements made pursuant to subdivision (a) shall be made as follows:

(1) A member appointed from a district that is specifically named in subdivision (c) of Section 39510 shall be reimbursed by the district from which the person qualified for membership.

(2) The member appointed as a board member of a district that is not specifically named in subdivision (c) of Section 39510 shall be reimbursed by the state board.

SEC. 5. Section 39513 of the Health and Safety Code is amended to read:

39513. The state board shall hold regular meetings at least twice a month. Special meetings may be called by the chair or upon the request of a majority of the members. Each member of the state board shall receive reimbursement for actual necessary traveling expenses incurred in the performance of official duties. Time spent in these board meetings shall count toward the sixty hours per month work requirement specified in Section 11564 of the Government Code.

SEC. 6. Section 39515 of the Health and Safety Code is amended to read:

39515. (a) The state board shall appoint an executive officer who shall serve at the pleasure of the state board and, except as provided in subdivision (d), may delegate any duty to the executive officer that the state board deems appropriate.

(b) The intention of the Legislature is hereby declared to be that the executive officer shall perform and discharge, under the direction and control of the state board, the powers, duties, purposes, functions, and jurisdiction vested in the state board and delegated to the executive officer by the state board.

(c) The state board shall, upon the receipt of a petition from any affected member of the public, affected district, or designated air quality planning agency, hold a public hearing to review any action taken by the executive officer pursuant to Section 41650, 41651, or 41652.

(d) Any action taken by the executive officer pursuant to Section 40469 or Sections 41503 to 41505, inclusive, shall be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 7. Section 39604 of the Health and Safety Code is amended to read:

39604. (a) The state board shall submit to the Governor and the Legislature, not later than January 1, 1985, and every two years thereafter, a biennial report on air quality conditions and trends statewide and on the status and effectiveness of state and local air quality programs.

(b) The report shall include, but not be limited to, all of the following:

(1) A review of air quality trends in each air basin over the most recent five-calendar-year period for which a complete data record is available.

(2) A statement of the number of violations of air quality standards that occurred in each air basin over the most recent two calendar years for which a complete data record is available, and a comparison of the number of violations to those in prior years.

(3) A listing of any changes in state ambient air quality standards adopted by the board over the previous two calendar years.

(4) A summary of the results of research projects concluded during the previous two years, the status of current research projects, and the conduct of the research program pursuant to Section 39703.

(5) A summary of any actions taken by the state board to assume the powers of districts under Section 39808.

(6) A summary of the effects of any significant federal actions over the previous two years that have affected state air quality or air quality programs.

(7) A summary of the status of the state implementation plan for achieving and maintaining ambient air quality standards.

(8) A summary of the state board's actions in the previous two calendar years to control toxic air pollutants pursuant to Chapter 3.5 (commencing with Section 39650).

(9) A summary of actions of the state board in controlling emissions from motor vehicles during the previous two-year period.

(10) A summary of significant actions taken by districts to control emissions from nonvehicular sources during the previous two-year period. This summary shall not include a district by district analysis for each district in the state, but shall include an overall analysis.

(11) A list of recommendations for legislation or administrative actions to resolve specific air quality problems in the state.

SEC. 8. Section 39671 of the Health and Safety Code is amended to read:

39671. The terms of the members of the Scientific Review Panel on Toxic Air Contaminants appointed pursuant to subdivision (b) of

Section 39670 shall be staggered so that the terms of three members expire each year.

SEC. 9. Section 39807 of the Health and Safety Code is amended to read:

39807. The subvention otherwise due a district may be reduced by the state board up to an amount equal to the funds that are granted to the district by the federal government. In so reducing a subvention, the state board shall take into account all of the following factors:

(a) The purpose for which the federal funds were granted.

(b) The needs of the district in relationship to the needs of other districts.

(c) Any special and worthy programs conducted by the district not required by the plan or program approved by the state board pursuant to Section 41500.

(d) The severity of air pollution within the district.

(e) Any other factors that the state board reasonably determines should be considered.

SEC. 10. Section 40162 of the Health and Safety Code is amended to read:

40162. Funding of the San Joaquin Valley Unified Air Pollution Control District, or, if the unified district ceases to exist, of the valley district if created pursuant to Section 5 of Chapter 915 of the Statutes of 1994, may be provided by, but is not limited to, grants, subventions, permit fees, penalties, and vehicle license fees. Notwithstanding any other provision of law, no funding contribution shall be required from the counties or cities included in the unified district or valley district.

SEC. 11. Section 40416 of the Health and Safety Code is repealed.

SEC. 12. Section 40450 of the Health and Safety Code is amended to read:

40450. Except as provided in Section 40449 regarding the adoption of stricter orders, rules, and regulations than those of the south coast district board, the board of supervisors of any county included, in whole or in part, within the south coast district shall have no authority, with respect to the control of air pollution in that part of the county included within the south coast district.

SEC. 13. Section 40452 of the Health and Safety Code is amended to read:

40452. The south coast district shall submit an annual report to the state board and the Legislature summarizing its regulatory activities for the preceding calendar year. The report shall include all of the following:

(a) A summary of each major rule and rule amendment adopted by the south coast district board. The summary shall include emission reductions to be accomplished by each rule or regulation; the cost per ton of emission reduction to be achieved from each rule or regulation; other

alternatives that were considered through the environmental assessment process; the cost per ton of comparable emission reductions that could have been achieved from each alternative; a statement of the reason why a given alternative was chosen; the conclusions and recommendations of the district's socioeconomic analysis, including any evaluations of employment impacts; and the source of funding for the rule or regulation. For the purposes of this subdivision, a major rule or rule amendment is one that is intended to significantly affect air quality or that imposes emission limitations.

(b) The number of permits to operate or to construct, by type of industry, that are issued and denied, and the number of permits to operate that are not renewed.

(c) Data on emission offset transactions and applications, by pollutant, during the previous fiscal year, including an accounting of the number of applications for permits for new or modified sources that were denied because of the unavailability of emission offsets.

(d) The district's forecast of budget and staff increases proposed for the following fiscal year, and projected for the next two fiscal years. Budget and staff increases shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years.

(e) An identification of the source of all revenues collected that are used, or proposed to be used, to finance activities related to either stationary or nonstationary sources.

(f) A response to audit recommendations pursuant to Section 40453. The response shall include proposed statutory changes needed to implement the recommendations.

(g) The results of the clean fuels program as specified in Section 40448.5. This element of the report shall be submitted biennially.

SEC. 14. Section 40454 of the Health and Safety Code is amended to read:

40454. (a) Notwithstanding Section 40716 or 40717, or subdivision (c) of Section 40717.5, the south coast district shall not adopt or enforce any rule or regulation that would require any employer to submit a trip reduction plan.

(b) The south coast district may require employers with 100 or more employees at a single worksite to provide ride-matching information and transit information to employees at that worksite.

SEC. 15. Section 40484 of the Health and Safety Code is repealed.

SEC. 16. Section 40500.1 of the Health and Safety Code is amended to read:

40500.1. (a) Except as required to comply with the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), fees assessed on stationary sources in the south coast district pursuant to Sections 40500 and 40510 shall not exceed, for any fiscal year, the actual costs of district programs pursuant to this article for the immediately preceding fiscal year with an adjustment not greater than the change in the California Consumer Price Index, for the preceding calendar year, from January 1 of the prior year to January 1 of the current year, as determined by the Department of Industrial Relations.

(b) Unless specifically authorized by statute, the total amount of all of the fees collected by the south coast district from stationary sources of emissions in the 1995–96 fiscal year, and in each subsequent fiscal year, shall not exceed the level of expenditure in the 1993–94 fiscal year, except that the total fee amount may be adjusted annually by not more than the percentage increase in the California Consumer Price Index, as specified in subdivision (a).

(c) Any new state or federal mandate that is applicable to the south coast district on and after January 1, 1994, shall not be subject to this section.

SEC. 17. Section 40503 of the Health and Safety Code is amended to read:

40503. (a) The south coast district hearing board, in determining whether the petitioner has presented evidence sufficient to make the findings specified in subdivision (a) of Section 42352, shall consider, in addition to any other relevant factors, both of the following:

(1) In determining whether conditions exist that are beyond the reasonable control of the petitioner, the hearing board shall consider whether the petitioner took actions to comply or seek a variance, that were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule from which the variance is sought.

(2) In determining whether requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, ''small business'' means a business that is independently owned and operated and meets all of the following criteria:

(A) The number of employees is 10 or less.

(B) The total gross annual receipts are five hundred thousand dollars ($500,000) or less.

(C) Emits not more than four tons per year of any nonattainment air contaminant or its precursor.

(2) If the petitioner is a small business, the hearing board shall consider the factors specified in subdivision (a) in the following manner:

(A) In determining whether the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining whether the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into the petitioner's financial and other capabilities to comply.

(C) In determining whether the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall balance, the impact to the petitioner's business and the benefit to the environment that would result if the petitioner is required to immediately comply.

(c) Where the petitioner is a governmental agency, public district, or any other governmental or public entity, in determining whether an unreasonable burden would be imposed, the hearing board shall consider any effects of requiring immediate compliance on the availability of essential public services.

SEC. 18. Section 40515 of the Health and Safety Code is amended to read:

40515. (a) Any public utility owned by a municipal corporation within the south coast district shall provide public notice, pursuant to subdivision (b), before submitting to the board of the south coast district any application for a permit to construct or operate any facility, machine, or contrivance that would be used for water treatment and would emit toxic air contaminants.

(b) A public utility specified in subdivision (a) shall mail, post, deliver, or use any other practical method to notify all residents and persons who own property within 330 feet of the property containing the proposed facility, machine, or contrivance. The notice shall include a description of the proposed facility, machine, or contrivance and an explanation of the right to petition the south coast district board to hold a hearing pursuant to Section 40509.

SEC. 19. Section 40521 of the Health and Safety Code is amended to read:

40521. (a) For each fiscal year, the percentage increase in the county apportionments by the south coast district board may not exceed the percentage increase in the California Consumer Price Index as specified in Section 2212 of the Revenue and Taxation Code, or the percentage increase in the total county property tax revenues for the

counties included, in whole or in part, within the south coast district, whichever is greater.

(b) The limitations specified in subdivision (a) shall not apply to increases in apportionments resulting from the termination of federal or state allocations to the south coast district, if the south coast district board votes to continue the programs financed with those funds.

SEC. 20. Section 40524 of the Health and Safety Code is repealed.

SEC. 21. Section 40709.7 of the Health and Safety Code is amended to read:

40709.7. (a) For the purposes of this section, ''military base'' means a military base that is designated for closure or downward realignment pursuant to the Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.).

(b) For the purposes of this section, "base reuse authority'' means the authority recognized pursuant to Section 65050 of the Government Code.

(c) An appropriate entity of the federal government may apply to the district for emission reduction credits that result from reduced emissions from a military base by June 1, 1995, or within 180 days of the reduction in emissions, whichever occurs later, if the federal government is eligible under district regulations to file and receive emission reduction credits on December 31, 1994.

(d) Not later than July 1, 1995, or six months from the date that the base closure or realignment decision becomes final, whichever occurs last, the district shall request and attempt to obtain all records maintained by a military base that are necessary to quantify emission reductions, including, but not limited to, records on the operation of any equipment that emits air contaminants, provided that the district either waives the payment of direct costs to obtain the records or enters into an agreement with the appropriate entity of the federal government or the base reuse authority for the payment of the direct costs to obtain the records. The district shall maintain these records.

(e) (1) A base reuse authority may apply to a district, under the emission reductions banking system established pursuant to Section 40709, for any reductions in emissions related to the termination or reduction of operations at the military base under its jurisdiction.

(2) The district shall quantify and bank the emission reductions for a closing or realigning military base within 180 days of a request by a base reuse authority and payment of any applicable fees, if one of the following events has occurred:

(A) The federal government agrees in writing to allow the base reuse authority to apply for and receive the emission reduction credits.

(B) The time period for the federal government to apply for emission reduction credits pursuant to subdivision (c) has expired and the federal government has not applied for the credits.

(C) The base reuse authority has, pursuant to other legal means, obtained the authority to acquire the emission reduction credits.

(f) The district shall permanently retire the emission reduction credits obtained pursuant to this section by 5 percent to improve air quality.

(g) The baseline for quantifying emission reductions shall be the date that the base closure or realignment decision becomes final. The two-year period ending on the date that the base closure or realignment decision was made shall be used to determine average emissions from the military base unless this two-year period is not representative of normal operations, in which case an alternative, consecutive, two-year period that is within the five years prior to the baseline date may be used, as determined by the district.

(h) After registration, certification, or other approval of the emission reductions by a district air pollution control officer pursuant to subdivision (a) of Section 40709 and this section, the base reuse authority shall be deemed the owner of the emissions source for purposes of the issuance of a certificate pursuant to Section 40710. Upon receipt of the certificate, or other approval, the base reuse authority may use, sell, or otherwise dispose of the emission reduction credits as determined by the base reuse authority, provided that the credits may only be used for base reuse within the jurisdiction of the district.

SEC. 22. Section 40717.5 of the Health and Safety Code is amended to read:

40717.5. (a) Any district that proposes to adopt or amend a rule or regulation pursuant to Section 40716 or 40717, which imposes any requirement on an indirect source to reduce vehicle trips or vehicle miles traveled, including, but not limited to, any rule or regulation affecting ridesharing or alternative transportation mode strategies, shall, prior to the adoption or amendment of the rule or regulation, do all of the following:

(1) Ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies that are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur. In complying with this paragraph, a district shall make reasonable and feasible efforts to assign responsibility for existing and new vehicle trips in a manner that equitably distributes responsibility among indirect sources.

(2) Ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips that are required to be reduced by other rules or regulations adopted for the same purpose.

(3) Take into account the feasibility of implementing the proposed rule or regulation.

(4) Pursuant to Section 40922, consider the cost effectiveness of the proposed rule or regulation.

(5) Determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources that would duplicate any requirement placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Section 40716 or 40717.

(b) A district may delegate to any city or county the responsibility to implement a rule or regulation that is subject to subdivision (a). However, if an indirect source subject to the rule or regulation has sites located both within and outside of the jurisdiction of a city or county to which that responsibility has been delegated, the indirect source may elect to be subject to the implementation of that rule or regulation only by the district. Notwithstanding Section 40454, an indirect source that elects to be regulated only by a district pursuant to this subdivision may also elect to include sites under district regulation that would not otherwise be subject to district regulation, and, in that event, shall not be subject to the implementation by a city or county of any requirement contained in that rule or regulation.

(c) (1) Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan, control, or condition land use, or on the ability of a city, county, or other public agency to impose trip reduction measures pursuant to a voter-mandated growth management program.

(2) Nothing in this section provides or transfers new authority over land use to a district.

SEC. 23. Section 40962 of the Health and Safety Code is repealed.

SEC. 24. Section 41212 of the Health and Safety Code is repealed.

SEC. 25. Section 41242 of the Health and Safety Code is repealed.

SEC. 26. Section 41261 of the Health and Safety Code is amended to read:

41261. The air pollution control officer (APCO) and designated deputies of the Mojave Desert District shall serve at the pleasure of the Mojave Desert district board, and shall receive the compensation that is determined by the Mojave Desert district board.

SEC. 27. Section 41263 of the Health and Safety Code is repealed.

SEC. 28. Section 41500 of the Health and Safety Code is amended to read:

41500. To coordinate air pollution control activities throughout the state, and to ensure that the entire state is, or will be, in compliance with the standards adopted pursuant to Section 39606, the state board shall do all of the following:

(a) Review the district attainment plans submitted pursuant to Section 40911, and the revised plans submitted pursuant to Section 40925, to determine whether the plans will achieve and maintain the state's ambient air quality standards by the earliest practicable date.

(b) Review the rules and regulations and programs submitted by the districts pursuant to Section 40704 to determine whether they are sufficiently effective to achieve and maintain the state ambient air quality standards.

(c) Review the enforcement practices of the districts and local agencies delegated authority by districts pursuant to Section 40717 to determine whether reasonable action is being taken to enforce their programs, rules, and regulations.

SEC. 29. Section 41500.5 of the Health and Safety Code is amended to read:

41500.5. Notwithstanding any other provision of law, any plan required by this division shall be subject to Article 5.5 (commencing with Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 30. Section 41507 of the Health and Safety Code is repealed.

SEC. 31. Section 41518 of the Health and Safety Code is repealed.

SEC. 32. Section 41519 of the Health and Safety Code is repealed.

SEC. 33. Section 41520 of the Health and Safety Code is repealed.

SEC. 34. Section 41600 of the Health and Safety Code is amended to read:

41600. (a) The districts shall provide for, and shall periodically revise as appropriate, the growth allowances necessary to accommodate the net air quality impact, if any, of cogeneration technology projects and resource recovery projects permitted pursuant to Section 42314, so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment.

(b) If appropriate, the districts shall submit to the state board, for inclusion in the next state implementation plan revisions, the necessary control measures for the growth allowances for federally approved nonattainment pollutants and precursors required by subdivision (a).

(c) Any district that lacks a federally approved demonstration of attainment with the national ambient air quality standard for ozone or nitrogen dioxide is not required to provide a growth allowance for any pollutant under this section until two years after the district makes both demonstrations. Federal approval shall be determined, based on

regulations adopted by the Environmental Protection Agency, after public notice and opportunity for comment. After a district demonstrates attainment, the district may establish a growth allowance by allocating an air quality increment within the ambient air quality standard or through adoption of further control measures.

SEC. 35. Section 41704.5 of the Health and Safety Code is repealed.

SEC. 36. Section 41865 of the Health and Safety Code is amended to read:

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) ''Sacramento Valley Air Basin'' means the area designated by the state board pursuant to Section 39606.

(2) ''Air pollution control council'' means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) ''Conditional rice straw burning permit'' means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) ''Allowable acres to be burned'' means the number of acres that may be burned pursuant to subdivision (c).

(5) ''Department'' means the Department of Food and Agriculture.

(6) ''Maximum fall burn acres'' means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) ''Maximum spring burn acres'' means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Year	Maximum Fall Burn Acres	Maximum Spring Burn Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that

the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:

(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

(k) ''Administrative burning'' means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(*l*) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be

from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, the advisory committee, and the Department of Commerce, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion goal, any recommended changes to this section, and other issues related to this section. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in subdivision (s) to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars ($50,000).

(o) The state board and the California Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in subparagraph (1) of

subdivision (c). On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c).

(p) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(q) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(r) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(s) (1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten

thousand dollars ($10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(t) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(u) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

SEC. 36.5. Section 41865 of the Health and Safety Code is amended to read:

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) ''Sacramento Valley Air Basin'' means the area designated by the state board pursuant to Section 39606.

(2) ''Air pollution control council'' means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) ''Conditional rice straw burning permit'' means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) ''Allowable acres to be burned'' means the number of acres that may be burned pursuant to subdivision (c).

(5) ''Department'' means the Department of Food and Agriculture.

(6) ''Maximum fall burn acres'' means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) ''Maximum spring burn acres'' means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Year	Maximum Fall Burn Acres	Maximum Spring Burn Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual

review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:

(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

(k) ''Administrative burning'' means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(*l*) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, the advisory committee, and the Trade and Commerce Agency, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion goal, any recommended changes to this section, and other issues related to this section. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in subdivision (s) to pay for the preparation of the report and its updates.

The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars ($50,000).

(o) The state board and the Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c). On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c).

(p) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(q) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(r) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(s) (1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars ($10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(t) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(u) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

SEC. 37. Section 41900 of the Health and Safety Code is repealed.

SEC. 38. Section 41981 of the Health and Safety Code is repealed.

SEC. 39. Section 42301.5 of the Health and Safety Code is amended to read:

42301.5. (a) Any article, machine, equipment, or contrivance that may emit into the ambient air any toxic air contaminant identified pursuant to Section 39662 shall comply with any regulation adopted by the state board or a district requiring a reduction in emissions of that contaminant or chemical from the article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the state board or the district.

(b) (1) Any article, machine, equipment, or contrivance that is located within a district that is designated by the state board as a nonattainment area for any national ambient air quality standard and for which an authority to construct is issued on or after January 1, 1988, shall comply with any district regulation that is adopted after December 31, 1982, and that requires a reduction in emissions of any air pollutant, including any precursor of an air pollutant, that interferes with the

attainment of the standard, from that article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the district.

(2) In determining a schedule of compliance under this subdivision, the district shall consider the extent to which the proposed schedule will adversely affect the ability of the facility owner or operator to amortize the capital costs of pollution control equipment purchased within the preceding five years.

SEC. 40. Section 42301.9 of the Health and Safety Code is amended to read:

42301.9. For the purposes of Sections 42301.5 to 42301.8, inclusive:

(a) ''School'' means any public or private school used for purposes of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(b) ''Air contaminant'' means any contaminant defined pursuant to Section 39013.

(c) ''Administering agency'' means an agency designated pursuant to Section 25502.

(d) ''Handle'' means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

SEC. 41. Section 42314 of the Health and Safety Code is amended to read:

42314. (a) Notwithstanding any other provision of any district permit system, and except as provided in this section, no district shall require emissions offsets for any cogeneration technology project or resource recovery project that satisfies all of the following requirements:

(1) The project satisfies one of the following size criteria:

(A) The project produces 50 megawatts or less of electricity. In the case of a combined cycle project, the electrical capacity of the steam turbine may be excluded from the total electrical capacity of the project for purposes of this paragraph if no supplemental firing is used for the steam portion and the combustion turbine has a minimum efficiency of 25 percent.

(B) The project processes municipal wastes and produces more than 50 megawatts, but less than 80 megawatts, of electricity.

(2) The project will use the appropriate degree of pollution control technology (BACT or LAER) as defined and to the extent required by the district permit system.

(3) Existing permits for any item of equipment to be replaced by the project, whether the equipment is owned by the applicant or a thermal beneficiary of the project, are surrendered to the district or modified to

prohibit operation simultaneously with the project to the extent necessary to satisfy district offset requirements. The emissions reductions associated with the shutdown of existing equipment shall be credited to the project as emissions offsets in accordance with district rules.

(4) The applicant has provided offsets to the extent they are reasonably available from facilities it owns or operates in the air basin and that mitigate the remaining impacts of the project.

(5) For new projects that burn municipal waste, landfill gas, or digester gas, the applicant has, in the judgment of the district, made a good faith effort to secure all reasonably available emissions offsets to mitigate the remaining impact of the project, and has secured all reasonably available offsets.

(b) This section applies to any project for which an application for an authority to construct is deemed complete by the district after January 1, 1986, only if the project's net emissions, combined with the net emissions from projects previously permitted under this section, are less than the amount provided for in the applicable growth allowance established by the district pursuant to Section 41600. If a district has not yet provided a growth allowance pursuant to Section 41600, the growth allowance is zero. For purposes of this subdivision, ''net emissions'' means the project's emissions, less any offsets provided by the applicant and less utility displacement credits granted pursuant to Section 41605.

(c) This section does not relieve a project from satisfying all applicable requirements of Part C (Prevention of Significant Deterioration) of the Clean Air Act, as amended in 1977 (42 U.S.C. Sec. 7401 et seq.), or any rules or regulations adopted pursuant to Part C.

SEC. 42. Section 42314.5 of the Health and Safety Code is amended to read:

42314.5. In considering a permit for a facility that utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler) to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall allow offset credits as provided in Sections 41600 and 41605.5.

SEC. 43. Section 42405.1 of the Health and Safety Code is amended to read:

42405.1. (a) Any person who provides information that materially contributes to the imposition of a civil penalty or criminal fine against any person for violating any provision of this part or any rule, regulation, or order of a district pertaining to mobile source emission regulations or limitations shall be paid a reward pursuant to regulations adopted by the district under subdivision (f). The reward shall not exceed 10 percent of the amount of the civil penalty or criminal fine collected by the district,

district attorney, or city attorney. The district shall pay the reward to the person who provides information that results in the imposition of a civil penalty, and the city or the county shall pay the reward to the person who provides information that results in the imposition of a criminal fine. No reward paid pursuant to this subdivision shall exceed five thousand dollars ($5,000).

(b) No informant shall be eligible for a reward for a violation known to the district, unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.

(c) If there is more than one informant for a single violation, the first notification received by the district shall be eligible for the reward. If the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.

(d) Public officers and employees of the United States, the State of California, or districts, counties, and cities in California are not eligible for the reward pursuant to subdivision (a), unless reporting of those violations does not relate in any manner to their responsibilities as public officers or employees.

(e) An informant who is an employee of a business and who provides information that the business violated this part is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

(f) The district shall adopt regulations that establish procedures for a determination of the accuracy and validity of information provided and for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for a reward and the materiality of the provided information shall be made pursuant to these regulations. In each case brought under subdivision (a), the district, the office of the city attorney, or the district attorney, whichever office brings the action, shall determine whether the information materially contributed to the imposition of civil or criminal penalties for violating any provision of this part or any rule, regulation, or order of a district pertaining to emission regulations or limitations.

(g) The district shall continuously publicize the availability of the rewards pursuant to this section for persons who provide information pursuant to this section.

(h) Claims may be submitted only for those referrals made on or after January 1, 1989.

SEC. 44. Section 36.5 of this bill incorporates amendments to Section 41865 of the Health and Safety Code proposed by both this bill and AB 2889. 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 41865 of the Health and Safety Code, and (3) this bill is enacted after AB 2889, in which case Section 41865 of the Health and Safety Code as amended by AB 2889, shall remain operative only until the operative date of this bill, at which time Section 36.5 of this bill shall become operative, and Section 36 of this bill shall not become operative.

CHAPTER 891

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

[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. It is the intent of the Legislature to establish a procurement policy of the State of California prohibiting purchase of any materials, goods, or services produced by or with the benefit of forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor.

SEC. 2. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no foreign-made equipment, materials, or supplies furnished to the state pursuant to the contract have been produced in whole or in part by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the state were produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty which shall be the greater of one thousand dollars ($1,000) or an amount equaling 20 percent of the value of the equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing if requested within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with the requirements under paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to the Director of Industrial Relations or the Attorney General.

(e) (1) For purposes of this section, the term ''forced labor'' shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) ''Abusive forms of child labor'' means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

(B) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily or under a contract the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) ''Exploitation of children in sweatshop labor'' means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association including the right to organize unions to bargain collectively.

CHAPTER 892

An act to amend Sections 11690, 11699, and 11715 of, and to add Section 11690.5 to, the Insurance Code, relating to workers' compensation 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 11690 of the Insurance Code is amended to read:

11690. Except in the case of the State Compensation Insurance Fund or as provided by Section 11715, every insurer desiring admission for

workers' compensation insurance, or desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance, shall, as a prerequisite to admission, or ability to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance, maintain on file in the office of the commissioner a bond in favor of the commissioner as trustee for the beneficiaries of awards of compensation against the insurer, or against any other insurer upon a policy reinsured by that insurer, to the extent of that reinsurance. Every insurer or reinsurer desiring to have the ability to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance shall notify the commissioner, in the manner and form prescribed by the commissioner, of its intent to reinsure that insurance. In addition, a late filing fee shall be imposed on the reinsurer pursuant to Section 924 for a failure to notify the commissioner of its intent to reinsure the workers' compensation insurance.

SEC. 2. Section 11690.5 is added to the Insurance Code, to read:

11690.5. The commissioner shall establish a list of all insurers or reinsurers authorized to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance. An insurer or reinsurer shall be authorized to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance if it has complied with Section 11690. The commissioner shall publish a master list of those insurers or reinsurers at least semiannually. Any insurer or reinsurer providing the notification and deposit required by Section 11690 shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. The list and addenda required by this section shall be published so that they are readily accessible to insurers and producers. The list and addenda required by this section shall also contain a notice that if an insurer enters into a contract of reinsurance with an insurer or reinsurer reinsuring the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance that is not authorized pursuant to this section, the ceding insurer may not be able to claim that reinsurance for reserve credit.

SEC. 3. Section 11699 of the Insurance Code is amended to read:

11699. The bond shall be in an amount:

(a) Not less than the sum of the following amounts computed, less credits and deductions allowable with respect to reinsurance in admitted insurers, as of the close of the last preceding December 31st in respect to workers' compensation insurance written subject to the workers' compensation laws of this state:

(1) The aggregate of the present values at 6-percent interest, or at the rate of the company's investment yield as determined by the NAIC Insurance Regulatory Information System Ratio Number 5 for Property and Casualty Companies, whichever is lower, of the determined and estimated future payments upon compensation claims not included in paragraph (2), including in those claims both benefits and loss expenses.

(2) The aggregate of the amounts computed as follows: For each of the preceding three years, 65 percent of the earned compensation premiums for that year less all loss and loss expense payments made upon claims incurred in the corresponding year from that 65 percent; except that the amount for each year shall not be less than the present value at 6-percent interest of the determined and the estimated unpaid claims incurred in that year, including both benefits and loss expenses.

(b) Not less than one hundred thousand dollars ($100,000).

(c) If the aggregate amount computed under subdivision (a) exceeds fifty thousand dollars ($50,000), not more than double the aggregate amount.

SEC. 4. Section 11715 of the Insurance Code is amended to read:

11715. (a) Any workers' compensation insurer, or insurer that reinsures the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance, may, in lieu of and for the same purpose as the bond required by Section 11690, and upon payment of the fee prescribed in this article, deposit cash instruments, approved letters of credit, or approved interest-bearing securities or approved stocks readily convertible into cash, investment certificates or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Deposit Insurance Corporation, certificates of deposit or savings deposits in a bank licensed to do business in this state, or approved securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9. The deposit shall be made from time to time as demanded by the commissioner and may be made with the Treasurer, or a bank or savings and loan association authorized to engage in the trust business pursuant to Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) of the Financial Code, or a trust company. A deposit of securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9 may only be made in a bank licensed to do business and located in this state that is a qualified custodian as defined in paragraph (1) of subdivision (a) of Section 1104.9 and that maintains deposits of at least seven hundred fifty million dollars ($750,000,000). The deposit shall be made subject to the approval of the commissioner under those rules and regulations that he or she shall promulgate. The deposit shall be maintained at a deposit value of not less than twenty-five thousand dollars ($25,000), nor less than the reserves

required of the insurer to be maintained under any of the provisions of Article 1 (commencing with Section 11550) of Chapter 1 of Part 3 of Division 2, relating to loss reserves on workers' compensation business of the insurer in this state, nor less than the sum of the amounts specified in subdivision (a) of Section 11699.

(b) Any workers' compensation insurer electing to bring itself within the provisions of subdivision (a) by submitting securities, stock, investment certificates, or share deposits registered in a depositor's name, shall execute a trust agreement in a form approved by the commissioner between the insurer, the institution in which the deposit is made or, where applicable, the qualified custodian of the deposit, and the commissioner, that grants to the commissioner the authority to withdraw the deposit as set forth in Section 11716. The insurer shall also execute and deliver in duplicate to the commissioner a power of attorney in favor of the commissioner for the purposes specified in Section 11690, supported by a resolution of the depositor's board of directors. The power of attorney and director's resolution shall be on forms approved by the commissioner, shall provide that the power of attorney cannot be revoked or withdrawn without the consent of the commissioner, and shall be acknowledged as required by law.

(c) The commissioner shall require payment of one hundred seventy-seven dollars ($177) in advance as a fee for the initial filing and the first semiannual review of each letter of credit specified in subdivision (a). In addition, each workers' compensation insurer depositing a letter of credit shall pay an annual fee of one hundred eighteen dollars ($118) in advance on account of the letter until its expiration or revocation. This fee shall be for annual periods commencing each January 1 and shall be due and payable on the following April 1.

(d) The commissioner shall require payment of one hundred eighteen dollars ($118) in advance as a fee for the initial filing of a trust agreement with a bank, savings and loan association, or trust company on deposits made pursuant to subdivision (a). An additional fee of one hundred eighteen dollars ($118) shall be payable for each amendment, supplement, or other change to the deposit agreement. In addition, the commissioner shall require the payment of fifty-eight dollars ($58) in advance for receiving and processing deposit schedules pursuant to this section. An additional fee of twenty-nine dollars ($29) shall be payable for each withdrawal, substitution, or any other change in the deposit.

(e) Any workers' compensation insurer that elects to deposit cash or cash equivalents pursuant to this section shall be entitled to a prompt refund of those deposits in excess of the amount determined by the commissioner pursuant to subdivision (a). The commissioner shall cause to be refunded any deposits determined by the commissioner to be

in excess of the amount required by subdivision (a) within 30 days of that determination. In the alternative, an insurer may use any excess deposit funds to offset a demand by the commissioner to increase its deposit due to the failure of a reinsurer to post a bond or deposit pursuant to Section 11690.

(f) If a reinsurer has not maintained a bond as required by Section 11690, or has not maintained deposits as required by subdivision (a), or a combination thereof, in amounts equal to the amounts of deposit credits claimed by its ceding insurers, the commissioner, after notifying the insurer and its ceding insurers of the deposit shortfall and allowing 45 days from the date of the notice for the deposit shortfall to be corrected, may disallow all or a portion of the reserve credits claimed by the ceding insurers.

SEC. 5. Nothing in this act shall be construed to alter or affect the deposit obligations required by Section 3702.8 of the Labor Code.

CHAPTER 893

An act to amend Sections 3540.1, 3543, and 3583.5 of, and to repeal and add Section 3546 of, the Government Code, relating to public school employees.

[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 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) ''Board'' means the Public Employment Relations Board created pursuant to Section 3541.

(b) ''Certified organization'' or ''certified employee organization'' means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) ''Confidential employee'' means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) ''Employee organization'' means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations

with that public school employer. ''Employee organization'' shall also include any person such an organization authorizes to act on its behalf.

(e) ''Exclusive representative'' means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) ''Impasse'' means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) ''Management employee'' means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) ''Meeting and negotiating'' means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) ''Organizational security'' is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) ''Public school employee'' or ''employee'' means any person employed by any public school employer except persons elected by

popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) ''Public school employer'' or ''employer'' means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(*l*) ''Recognized organization'' or ''recognized employee organization'' means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) ''Supervisory employee'' means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 2. Section 3543 of the Government Code is amended to read:

3543. (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive

representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

SEC. 3. Section 3546 of the Government Code is repealed.

SEC. 4. Section 3546 is added to the Government Code, to read:

3546. (a) Notwithstanding any other provisions of law, any public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

SEC. 5. Section 3583.5 of the Government Code is amended to read:

3583.5. (a) (1) Notwithstanding any other provision of law, any employee of the California State University or the University of California, other than faculty of the University of California who are eligible for membership in the Academic Senate, who is in a unit for which an exclusive representative has been selected pursuant to this chapter, shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

(2) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the higher education employer.

(b) The organizational security arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (c). The higher education employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(c) (1) The organizational security arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any memorandum of understanding in effect on or after January 1, 2000.

(2) If the organizational security arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all the employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the organizational security arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party, and the cost of conducting an election to rescind the arrangement shall be borne by the board.

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 894

An act to amend Sections 60231, 60315, and 60316 of, to add Sections 60230.5 and 60328.1 to, and to add Chapter 5 (commencing with Section 60290) to Part 5 of Division 18 of, the Water Code, relating to water.

[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 60230.5 is added to the Water Code, to read:

60230.5. All expenditures for construction work, materials, equipment and supplies, and professional services, including, but not limited to, legal, legislative, public affairs, public relations, and engineering services, regardless of price shall be made pursuant to contract. All district contracts shall be in writing in a form prescribed by

the general manager and approved by the general counsel. At minimum, each contract shall include the relevant scope of work, duration, and terms of payment.

SEC. 2. Section 60231 of the Water Code is amended to read:

60231. (a) The powers and duties herein enumerated, except as otherwise expressly provided, shall be exercised and performed by the board of the district. If an existing agency has facilities available and adequate to accomplish any part of the purposes of a district created under this act, the district shall investigate and determine the cost of contracting for the accomplishment of that purpose through that existing agency. Thereupon, the board shall make a finding , by resolution and supported by evidence, whether or not the purpose proposed to be accomplished by the district can be achieved more economically and for the best interests of the area to be benefited by entering into such a contract with an existing agency. If the board finds that such contract is more economical and for the best interests of the area to be benefited, it shall so contract for the accomplishment of said purpose, if such agency so agrees. The purpose of this section is to avoid duplication of similar operations by existing agencies and replenishment districts.

(b) Prior to constructing, leasing, purchasing, or contracting for a capital improvement project, a district shall determine the feasibility of such a project by ordering or preparing and reviewing a cost-benefit analysis based upon reasonable assumptions.

SEC. 3. Chapter 5 (commencing with Section 60290) is added to Part 5 of Division 18 of the Water Code, to read:

CHAPTER 5. DISTRICT RESERVES AND ACCOUNTING

60290. The district may establish an annual reserve fund in an amount not to exceed ten million dollars ($10,000,000) commencing with the 2000–01 fiscal year. The maximum allowable reserve fund may be adjusted annually commencing with 2001–02 fiscal year to reflect percentage increases or decreases in the blended cost of water from district supply sources. A minimum of 80 percent of the reserve shall be for water purchases.

60291. The limitation on the reserve established in Section 60290 does not apply to the unexpended balance of any appropriated funds in a capital improvement project construction account established to pay the cost of a project or projects under construction.

60292. (a) The district shall order, review, and maintain on file an independent, audited financial statement not later than 60 days from the conclusion of the district's fiscal year. The independent audited financial statement shall be prepared by a certified public accountant or a public accountant, licensed by the California Board of Accountancy. The

independent audited financial statement shall be consistent with standards provided in the ''Standards for Audits of Governmental Organizations, Programs, Activities, and Functions'' prepared by the Comptroller General of the United States. The independent audited financial statement shall include all of the following:

(1) The balances in all accounts established for the maintenance of the district's funds.

(2) A report describing the amount of district funds to be expended for any capital improvement project authorized to be constructed or funded by the district and a detailed description of the capital improvement project.

(3) A report detailing the source of funds to be expended on any authorized capital improvement project, and whether the source of funds is the water replenishment assessment levied in accordance with Part 6 (commencing with Section 60300).

(4) A report describing the propriety of the district's operating expenses.

(5) A summary of independent audited financial statement exceptions and management improvement recommendations.

(6) A description of correction or plan of correction shall be incorporated in the independent audited financial statement, describing the specific actions that are planned to be taken, or that have been taken, to correct the problem identified by the auditor. The descriptions of specific actions to be taken or that have been taken shall not solely consist of general comments such as ''will implement,'' ''accepted the recommendation,'' or ''will discuss at a later date.''

(b) Copies of the independent audited financial statements shall be submitted to the Governor, the Legislature, and the State Auditor on or before November 1 of each year.

SEC. 4. Section 60315 of the Water Code is amended to read:

60315. Upon completing the hearing, but no later than the second Tuesday in May, the board shall, by resolution, find all of the following:

(a) The annual overdraft for the preceding water year.

(b) The estimated annual overdraft for the current water year.

(c) The estimated annual overdraft for the ensuing water year.

(d) The accumulated overdraft as of the last day of the preceding water year.

(e) The estimated accumulated overdraft as of the last day of the current water year.

(f) The total production of groundwater from the groundwater supplies within the district during the preceding water year.

(g) The estimated total production of groundwater from the groundwater supplies within the district for the current water year.

(h) The estimated total production of groundwater from the groundwater supplies within the district for the ensuing water year.

(i) The changes during the preceding water year in the pressure levels or piezometric heights of the groundwater contained within pressure-level areas of the district, and the effects thereof upon the groundwater supplies within the district.

(j) The estimated changes during the current water year in the pressure levels or piezometric heights of the groundwater contained within pressure-level areas of the district, and the estimated effects thereof upon the groundwater supplies within the district.

(k) The quantity of water that should be purchased for the replenishment of the groundwater supplies of the district during the ensuing water year.

(*l*) The source and estimated cost of water available for the replenishment.

(m) The estimated costs of replenishing the groundwater supplies with the water so purchased.

(n) The estimated costs of purchasing, in water years succeeding the ensuing water year, that portion of the quantity of water which should be purchased for the replenishment of the groundwater supplies of the district during the ensuing water year, but which is estimated to be unavailable for purchase during the ensuing water year; estimated costs shall be based on the estimated price of water for replenishment purposes during the ensuing water year.

(o) The estimated rate of the replenishment assessment required to be levied upon the production of groundwater from the groundwater supplies within the district during the ensuing fiscal year for the purposes of accomplishing the replenishment and providing a reserve fund to purchase in future years, when available, that portion of the quantity of water which should be purchased for the replenishment of the groundwater supplies of the district during the ensuing water year, but which is estimated to be unavailable for purchase during that ensuing water year.

(p) Whether any contaminants should be removed from groundwater supplies during the ensuing fiscal year, and whether any other actions under Section 60224 should be undertaken during the ensuing fiscal year, the estimated costs thereof, and the estimated additional rate of replenishment assessment required to be levied upon the production of groundwater from the groundwater supplies within the district during the ensuing fiscal year for those purposes.

(q) Whether any program for removal of contaminants or other actions under Section 60224 should be a multiyear program or is a continuation of a previously authorized multiyear program.

(r) The amount, if any, by which the estimated reserve funds on hand at the end of the current fiscal year will exceed the annual reserve fund limit determined pursuant to Section 60290.

SEC. 5. Section 60316 of the Water Code is amended to read:

60316. Based on the findings pursuant to Section 60315, the board shall, by resolution, determine all of the following:

(a) What portion, if any, of the estimated cost of purchasing water for replenishment for the ensuing fiscal year shall be paid for by a replenishment assessment.

(b) What portion, not exceeding 25 percent of the above portion, of the estimated cost of purchasing in the future that quantity of water which should be purchased during the ensuing water year, but which is estimated to be unavailable during that year, shall be raised by a replenishment assessment.

(c) What portion of the estimated costs of removing contaminants from groundwater supplies and of taking other actions under Section 60224 during the ensuing fiscal year shall be paid for by a replenishment assessment.

(d) What portion, if any, of the cost of a capital improvement project for replenishment purposes shall be paid for by a replenishment assessment.

(e) What portion, if any, of the cost of a capital improvement project undertaken pursuant to Section 60224 shall be paid for by a replenishment assessment.

SEC. 6. Section 60328.1 is added to the Water Code, to read:

60328.1. The district shall apply the estimated fiscal yearend balance in excess of the amount permitted in Section 60290 to a replenishment assessment rate reduction or to the purchase of water in the succeeding fiscal year.

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. enacted and

SEC. 8. This act shall only become operative if Assembly Bill 1834 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2001.

CHAPTER 895

An act to amend Section 19134 of the Government Code, relating to personal services contracts.

[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 19134 of the Government Code is amended to read:

19134. (a) Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services shall include provisions for employee benefits that are valued at least 85 percent of the state employer cost of benefits provided to state employees for performing similar duties.

(b) For purposes of this section, ''benefits'' includes ''health, dental, and vision benefits.''

(c) (1) The Department of Personnel Administration shall establish annually the state employer benefit costs for workers covered pursuant to this section.

(2) Benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration.

(d) In lieu of providing actual benefits, contractors may comply with this section by a cash payment to employees equal to the applicable determination under subdivision (c).

(e) Failure to provide benefits or cash-in-lieu to employees as required under this section shall be deemed to be a material breach for any contract for personal services covered by this section.

(f) The Department of General Services and the Department of Personnel Administration may adopt guidelines and regulations to implement the requirements of this section.

(g) This section applies to all contracts exceeding 90 days.

CHAPTER 896

An act to amend, repeal, and add Section 24214 of the Education Code, relating to the State Teachers' Retirement System.

[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 find and declares:

(a) As a result of the enactment of the Class-Size Reduction Program, over 22,000 emergency credentialed teachers are currently teaching tens of thousands of students across the state. Because many of these teachers are minimally qualified and inexperienced, the quality of instruction for these students has been adversely affected.

(b) The average teaching experience of retired teachers in this state is 27 years.

(c) Under the State Teachers' Retirement Law, postretirement earnings of retired teachers are limited, thereby creating a disincentive for retired teachers to reenter the teaching profession.

(d) Teachers who retired on or before July 1, 1998, who choose to reenter the teaching profession under the Class-Size Reduction Program, and who satisfy other conditions are exempt from those postretirement earnings limitations. Since the enactment of this exemption, over 1,600 retired teachers throughout the state have returned to teaching, providing approximately 32,000 students with the benefits of experienced, highly qualified teachers.

(e) The pool of retired teachers represents a valuable resource. All California students would benefit if more retired teachers chose to return to teaching.

SEC. 2. Section 24214 of the Education Code is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member shall not make contributions to the retirement fund or accrue service credit based on compensation earned from that service.

(b) The rate of pay for service performed by a member retired for service under this part as an employee of the employer shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part shall not be required to reinstate for performing the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5, as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) (1) The postretirement compensation limitation provisions set forth in this section shall not be applicable to compensation earned by a member retired for service under this part who has returned to work after the date of retirement and, for a period of at least 12 consecutive months, has not performed the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(2) The postretirement compensation limitation provisions set forth in this section shall not be applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor, shall be twenty-two thousand dollars ($22,000) in any one school year, adjusted annually by the board each July 1 by the annual amount of increase in the All Urban California Consumer Price Index using December 1999 as the base.

(g) If a member retired for service under this part earns compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, and if that compensation is not exempt from that limitation under subdivision (e) or any other provisions of law, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(h) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

(i) This section shall be repealed on January 1, 2008, unless later enacted legislation extends or deletes that date.

SEC. 3. Section 24214 is added to the Education Code, to read:

24214. (a) A member retired for service under this part may perform the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member shall not make contributions to the retirement fund or accrue service credit based on compensation earned from that service.

(b) The rate of pay for service performed by a member retired for service under this part as an employee of the employer shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part shall not be required to reinstate for performing the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5, as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) The postretirement compensation limitation provisions set forth in this section shall not be applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor, shall be twenty-two thousand dollars ($22,000), in any one school year, adjusted annually by the board each July 1 by the annual amount of increase in the All Urban California Consumer Price Index using December 1999 as the base.

(g) If a member retired for service under this part earns compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer,

as an employee of a third party, or as an independent contractor, within the California public school system, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(h) The language of this section derived from the amendments to the section of this number added by Chapter 394 of the Statutes of 1995, enacted during the 1995–96 Regular Session, shall be deemed to have become operative on July 1, 1996.

(i) This section shall become operative on January 1, 2008.

CHAPTER 897

An act to add and repeal Chapter 27.1 (commencing with Section 24230) of Part 13 of Division 1 of Title 1 of the Education Code, relating to state teachers' 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. Chapter 27.1 (commencing with Section 24230) is added to Part 13 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 27.1. RETIREMENT OPTION PROGRAM

24230. This chapter shall be known and may be cited as the ''Retirement Option Program.''

24231. The Retirement Option Program is hereby created to add flexibility to the system. It provides members who elect to participate in the program access to a lump-sum payment and a reduced monthly retirement allowance.

24232. The design and administration of the Retirement Option Program shall conform with the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

24233. If any provision of this chapter or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

24234. The board shall implement the Retirement Option Program pursuant to the provisions of this chapter no later than January 1, 2002, unless the board determines, by resolution, that the implementation tasks cannot be completed until a later date, in which case the board shall implement the program pursuant to this chapter no later than January 1, 2003.

24235. The board may adopt regulations to implement the program.

24236. A member who retires for service on or after January 1, 2002, and who has reached normal retirement age may elect, on a form prescribed by the system, to receive a lump-sum payment and an actuarially reduced monthly allowance pursuant to this chapter in lieu of the monthly allowance that would otherwise be payable to the member pursuant to Chapter 27 (commencing with Section 24201).

24237. (a) A member who makes the election described in Section 24236 shall receive a one-time, lump-sum payment in an amount that equals or does not exceed the lesser of the following amounts:

(1) The actuarial present value of the difference between (A) the monthly allowance payable to the member pursuant to Chapter 27 (commencing with Section 24201), and (B) an amount equal to 2 percent of the member's final compensation multiplied by the number of years of credited service and divided by 12.

(2) Fifteen percent of the actuarial present value of the monthly allowance payable to the member under Chapter 27 (commencing with Section 24201).

(b) Notwithstanding any other provision of this part, a member who makes the election described in Section 24236 shall receive a monthly allowance, pursuant to Chapter 27 (commencing with Section 24201), that shall be actuarially reduced to reflect the lump-sum amount paid under subdivision (a).

24237.5. The Legislature reserves the right to modify the provisions of this chapter to further the objective of permitting eligible members to receive a lump-sum distribution of a portion of their benefits, with a corresponding actuarial reduction in their monthly allowance, such that there shall be no net actuarial impact to the Defined Benefit Program.

24238. This chapter 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.

CHAPTER 898

An act to amend Section 3006, to repeal Section 2001 of, and to repeal and add Sections 2151, 13102, 13203, 13206, 13230, 13300, 13301, and 13302 of, the Elections Code, relating to primary 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. Section 2001 of the Elections Code is repealed.

SEC. 2. Section 2151 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 3. Section 2151 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 4. Section 2151 is added to the Elections Code, to read:

2151. At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, but no person shall be entitled to vote the ballot of any political party at any primary election unless he or she has stated the name of the party with which he or she intends to affiliate or unless he or she has declined to state a party affiliation and the political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the ballot of that political party. The voter registration card shall include a listing of all qualified political parties.

No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party designated in his or her registration, except as provided by Section 2152 or unless he or she has declined to state a party affiliation and the party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the party ballot or for delegates to the party convention.

SEC. 5. Section 3006 of the Elections Code is amended to read:

3006. (a) Any printed application that is to be distributed to voters for requesting absent voter ballots shall contain spaces for the following:

(1) The printed name and residence address of the voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The voter's signature.

(4) The name and date of the election for which the request is to be made.

(5) The date the application must be received by the elections official.

(b) (1) The information required by paragraphs (1), (4), and (5) of subdivision (a) may be preprinted on the application. The information required by paragraphs (2) and (3) of subdivision (a) shall be personally affixed by the voter.

(2) An address, as required by paragraph (2) of subdivision (a), may not be the address of any political party, a political campaign headquarters, or a candidate's residence. However, a candidate, his or her spouse, immediate family members, and any other voter who shares the same residence address as the candidate may request that an absentee ballot be mailed to the candidate's residence address.

(3) Any application which contains preprinted information shall contain a conspicuously printed statement, as follows: ''You have the legal right to mail or deliver this application directly to the local elections official of the county where you reside.''

(c) The application shall inform the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a phone number that the voter may call to inquire which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads, as follows: ''I am not presently affiliated with any political party. However, for the primary election only, I request an absentee ballot for the _____ Party.'' The name of the political party shall be personally affixed by the voter.

(d) The application shall provide the voters with information concerning the procedure for establishing permanent absentee voter status, and the basis upon which permanent absentee voter status is claimed.

(e) The application shall be attested to by the voter as to the truth and correctness of its content, and shall be signed under penalty of perjury.

SEC. 6. Section 13102 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 7. Section 13102 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 8. Section 13102 is added to the Elections Code, to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of ballot for all candidates for public office, except that, for partisan primary elections, one form of ballot shall be

provided for each qualified political party as well as one form of nonpartisan ballot, in accordance with subdivision (b).

(b) At partisan primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the ballot of that political party. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices and measures to be voted for at the primary election. Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has declined to state a party affiliation to vote the ballot of that political party at the next ensuing partisan primary election. The political party shall notify the party chairman immediately upon adoption of that party rule. The party chairman shall provide written notice of the adoption of that rule to the Secretary of State not later than the 60th day prior to the partisan primary election at which the vote is authorized.

SEC. 9. Section 13203 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 10. Section 13203 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 11. Section 13203 is added to the Elections Code, to read:

13203. Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words ''OFFICIAL BALLOT.'' However, if the ballot is no wider than a single column, the words ''OFFICIAL BALLOT'' may be as small as 24-point. Beneath this heading, in the case of a partisan primary election, shall be printed in 18-point boldface gothic capital type the official party designation or the words ''NONPARTISAN BALLOT'' as applicable. Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

SEC. 12. Section 13206 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 13. Section 13206 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 14. Section 13206 is added to the Elections Code, to read:

13206. (a) On the partisan ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the partisan ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldface gothic capital type the words ''Partisan Offices.''

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed ''Nonpartisan Offices.''

SEC. 15. Section 13230 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 16. Section 13230 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 17. Section 13230 is added to the Elections Code, to read:

13230. (a) If the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger than may be conveniently handled, the county elections official may provide that a nonpartisan ballot shall be given to each partisan voter, together with his or her partisan ballot, and that the material appearing under the heading ''Nonpartisan Offices'' on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots.

(b) If the county elections official so provides, the procedure prescribed for the handling and canvassing of ballots shall be modified to the extent necessary to permit the use of two ballots by partisan voters. The county elections official may, in this case, order the second ballot to be printed on paper of a different tint, and assign to those ballots numbers higher than those assigned to the ballots containing partisan offices.

(c) ''Partisan voters,'' for purposes of this section, includes persons who have declined to state a party affiliation, but who have chosen to vote the ballot of a political party as authorized by that party's rules duly noticed to the Secretary of State.

SEC. 18. Section 13300 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 19. Section 13300 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 20. Section 13300 is added to the Elections Code, to read:

13300. (a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

SEC. 20.5. Section 13300 is added to the Elections Code, to read:

(a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon

request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

SEC. 21. Section 13301 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 22. Section 13301 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 23. Section 13301 is added to the Elections Code, to read:

13301. (a) At the time the county elections official prepares sample ballots for the presidential primary, he or she shall also prepare a list with the name of candidates for delegates for each political party. The names of the candidates for delegates of any political party shall be arranged upon the list of candidates for delegates of that party in parallel columns under their preference for President. The order of groups on the list shall be alphabetical according to the names of the persons they prefer to appear upon the ballot. Each column shall be headed in boldface 10-point, gothic type as follows: ''The following delegates are pledged to ____.'' (The blank being filled in with the name of that candidate for presidential nominee for whom the members of the group have expressed a preference.) The names of the candidates for delegates shall be printed in eight-point, roman capital type.

(b) Copies of the list of candidates for delegates of each party shall be submitted by the county elections official to the chairperson of the county central committee of that party, and the county elections official shall post a copy of each list in a conspicuous place in his or her office.

SEC. 24. Section 13302 of the Elections Code, as added by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 25. Section 13302 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 26. Section 13302 is added to the Elections Code, to read:

13302. The county elections official shall forthwith submit the sample ballot of each political party to the chairperson of the county central committee of that party, and shall mail a copy to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of each sample ballot in a conspicuous place in his or her office.

SEC. 27. It is the intent of the Legislature that special elections to fill vacancies in legislative and congressional offices continue to be conducted pursuant to Chapter 1 (commencing with Section 10700) of Part 6 of Division 10 of the Elections Code.

SEC. 28. Section 20.5 of this bill incorporates provisions in Section 13300 of the Elections Code, as proposed to be added by both this bill and Assembly Bill 1094. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill adds Section 13300 to the Elections Code, and (3) this bill is enacted after AB 1094, in which case Section 20 of this bill shall not become operative.

SEC. 29. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 899

An act to amend Sections 2035, 2102, 2107, 2119, 2154, 2155, 2187, 9094, 13303, and 13306 of, and to repeal and add Section 13300 of, the Elections 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. Section 2035 of the Elections Code is amended to read:

2035. A person duly registered as a voter in any precinct in California who removes therefrom within 14 days prior to an election shall, for the purpose of that election, be entitled to vote in the precinct from which the person so removed until the close of the polls on the date of that election.

SEC. 2. Section 2102 of the Elections Code is amended to read:

2102. (a) A person may not be registered as a voter except by affidavit of registration. The affidavit shall be mailed or delivered to the county elections official and shall set forth all of the facts required to be shown by this chapter. A properly executed registration shall be deemed effective upon receipt of the affidavit by the county elections official if received on or before the 15th day prior to an election to be held in the registrant's precinct. A properly executed registration shall also be

deemed effective upon receipt of the affidavit by the county elections official if any of the following apply:

(1) The affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) on or before the 15th day prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (1) or (2) on or before the 15th day prior to the election.

(b) For purposes of verifying signatures on a recall, initiative, or referendum petition or signatures on a nomination paper or any other election petition or election paper, a properly executed affidavit of registration shall be deemed effective for verification purposes if both (a) the affidavit is signed on the same date or a date prior to the signing of the petition or paper, and (b) the affidavit is received by the county elections official on or before the date on which the petition or paper is filed.

(c) Notwithstanding any other provision of law to the contrary, the affidavit of registration required under this chapter may not be taken under sworn oath, but the content of the affidavit shall be certified as to its truthfulness and correctness, under penalty of perjury, by the signature of the affiant.

SEC. 3. Section 2107 of the Elections Code is amended to read:

2107. (a) Except as provided in subdivision (b), the county elections official shall accept affidavits of registration at all times except during the 14 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county elections official shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if the affidavit is executed on or before the 15th day prior to the election, and if any of the following apply:

(1) The affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(2) The affidavit is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The affidavit is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 15th day prior to the election.

SEC. 4. Section 2119 of the Elections Code is amended to read:

2119. (a) In lieu of executing a new affidavit of registration for a change of address within the county the county elections official shall accept a notice or letter of the change of address signed by a voter as he or she is registered.

(b) The county elections official shall accept a notification for the forthcoming election and shall change the address on the voter's affidavit of registration accordingly if the notification is executed on or before the 15th day prior to the election and if any of the following apply:

(1) The notification is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(2) The notification is submitted to the Department of Motor Vehicles or accepted by any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg) prior to the election.

(3) The notification is delivered to the county elections official by means other than those described in paragraphs (2) and (3) on or before the 14th day prior to the election.

SEC. 5. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official voters shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If no party affiliation is shown, it shall be presumed that the affiant has no party affiliation.

(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 15th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 15th day prior to the election, or (2) the affidavit is postmarked on or before the 15th day prior to the election and received by mail by the county elections official.

(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as ''United States,'' ''U.S.A.,'' or other recognizable term designating the United States.

SEC. 6. Section 2155 of the Elections Code is amended to read:

2155. Upon receipt of a properly executed affidavit of registration or address correction notice or letter pursuant to Section 2119, Article

2 (commencing with Section 2220), or the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the county elections official shall send the voter a voter notification by nonforwardable, first-class mail, address correction requested. The voter notification shall be substantially in the following form:

VOTER NOTIFICATION

You are registered to vote. This card is being sent as a notification of:
1. Your recently completed affidavit of registration,

OR,

2. A correction to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write the county elections official immediately.

You may vote in any election held 15 or more days after the date shown on the reverse side of this card.

Your name will appear on the index kept at the polls.

(Signature of Voter)

SEC. 7. Section 2187 of the Elections Code is amended to read:

2187. (a) Each county elections official shall send to the Secretary of State, in a format described by the Secretary of State, a summary statement of the number of voters in the county. The statement shall show the total number of voters in the county, the number registered as affiliated with each qualified political party, the number registered in nonqualified parties, and the number who declined to state any party affiliation. The statement shall also show the number of voters, by political affiliations, in each city, supervisorial district, Assembly district, Senate district, and congressional district, located in whole or in part within the county.

(b) The Secretary of State, on the basis of the statements sent by the county elections officials and within 30 days after receiving those statements, shall compile a statewide list showing the number of voters, by party affiliations, in the state and in each county, city, supervisorial district, Assembly district, Senate district, and congressional district, in

the state. A copy of this list shall be made available, upon request, to any elector in this state.

(c) Each county that uses data processing equipment to store the information set forth in the affidavit of registration shall send to the Secretary of State one copy of the magnetic tape file with the information requested by the Secretary of State. Each county that does not use data processing storage shall send to the Secretary of State one copy of the index setting forth that information.

(d) The summary statements and the magnetic tape file copy or the index shall be sent at the following times:

(1) On the 135th day before each presidential primary and before each direct primary, with respect to voters registered on the 154th day before the primary election.

(2) Not less than 50 days prior to the primary election, with respect to voters registered on the 60th day before the primary election.

(3) Not less than seven days prior to the primary election, with respect to voters registered before the 14th day prior to the primary election.

(4) Not less than 50 days prior to the general election, with respect to voters registered on the 60th day before the general election.

(5) Not less than seven days prior to the general election, with respect to voters registered before the 14th day prior to the general election.

(6) On or before March 1 of each odd-numbered year, with respect to voters registered as of February 10.

(7) On or before October 1 of each odd-numbered year, with respect to voters registered as of September 12.

(e) The Secretary of State may adopt regulations prescribing the content and format of the magnetic tape file or index referred to in subdivision (c) and containing the registered voter information from the affidavits of registration.

(f) The Secretary of State may adopt regulations prescribing additional regular reporting times, except that the total number of reporting times in any one calendar year shall not exceed 12.

(g) The Secretary of State shall make the information from the magnetic tape files or the printed indexes available, under conditions prescribed by the Secretary of State, to any candidate for federal, state, or local office, to any committee for or against any proposed ballot measure, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly or political research, or governmental purposes as determined by the Secretary of State.

SEC. 8. Section 9094 of the Elections Code is amended to read:

9094. (a) The Secretary of State shall mail ballot pamphlets to voters, in those instances in which the county clerk uses data processing equipment to store the information set forth in the affidavits of

registration, before the election at which measures contained in the ballot pamphlet are to be voted on unless a voter has registered fewer than 29 days before the election. The mailing shall commence not less than 40 days before the election and shall be completed no later than 21 days before the election for those voters who registered on or before the 60th day before the election. The Secretary of State shall mail one copy of the ballot pamphlet to each registered voter at the postal address stated on the voter's affidavit of registration, or the Secretary of State may mail only one ballot pamphlet to two or more registered voters having the same surname and the same postal address.

(b) In those instances in which the county clerk does not utilize data processing equipment to store the information set forth in the affidavits of registration, the Secretary of State shall furnish ballot pamphlets to the county clerk not less than 45 days before the election at which measures contained in the ballot pamphlet are to be voted on and the county clerk shall mail ballot pamphlets to voters, on the same dates and in the same manner provided by subdivision (a).

(c) The Secretary of State shall provide for the mailing of ballot pamphlets to voters registering after the 60th day before the election and before the 28th day before the election, by either: (1) mailing in the manner as provided in subdivision (a), or (2) requiring the county clerk to mail ballot pamphlets to those voters registering in the county after the 60th day before the election and before the 28th day before the election pursuant to the provisions of this section. The second mailing of ballot pamphlets shall be completed no later than 10 days before the election. The county clerk shall mail a ballot pamphlet to any person requesting a ballot pamphlet. Three copies, to be supplied by the Secretary of State, shall be kept at every polling place, while an election is in progress, so that they may be freely consulted by the voters.

SEC. 9. Section 13300 of the Elections Code, as amended by Chapter 920 of the Statutes of 1994, is repealed.

SEC. 10. Section 13300 of the Elections Code, as amended by Proposition 198 at the March 26, 1996, direct primary election, is repealed.

SEC. 11. Section 13300 is added to the Elections Code, to read:

(a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100) and under the appropriate title of each office, the names of all candidates for whom nominations papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary elections.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the elections. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary elections.

SEC. 11.5. Section 13300 is added to the Elections Code, to read:

(a) By at least 29 days before the primary, each county elections official shall prepare separate sample ballots for each political party and a separate sample nonpartisan ballot, placing thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names of all candidates for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballot shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) One sample ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary who registered at least 29 days prior to the election not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election, provided that on election day any such person may, upon request, vote the ballot of a political party if authorized by the party's rules, duly noticed to the Secretary of State.

SEC. 12. Section 13303 of the Elections Code is amended to read:

13303. (a) For each election, each appropriate elections official shall cause to be printed, on plain white paper or tinted paper, without watermark, at least as many copies of the form of ballot provided for use in each voting precinct as there are voters in the precinct. These copies shall be designated ''sample ballot'' upon their face and shall be identical to the official ballots used in the election, except as otherwise provided by law. A sample ballot shall be mailed, postage prepaid, not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election.

(b) The elections official shall send notice of the polling place to each voter with the sample ballot. Only official matter shall be sent out with the sample ballot as provided by law.

(c) The elections official shall send notice of the polling place to each voter who registered after the 29th day prior to the election and is eligible to participate in the election. The notice shall also include information as to where the voter can obtain a sample ballot and a ballot pamphlet prior to the election, a statement indicating that those documents will be available at the polling place at the time of the election, and the address of the Secretary of State's website and, if applicable, of the county website where a sample ballot may be viewed.

SEC. 13. Section 13306 of the Elections Code is amended to read:

13306. Notwithstanding Sections 13300, 13301, 13303, and 13307, sample ballots and candidates' statements need not be mailed to voters who registered after the 54th day before an election, but all of these voters shall receive polling place notices and state ballot pamphlets. A state ballot pamphlet is not required to be mailed to a voter who registered after the 29th day prior to an election. Each of these voters shall receive a notice in bold print that states: ''Because you are a late registrant, you are not receiving a sample ballot or candidates' statements.''

SEC. 14. Section 11.5 of this bill incorporates provisions in Section 13300 of the Elections Code, as proposed to be added by both this bill and Senate Bill 28. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill adds Section 13300 to the Elections Code, and (3) this bill is enacted after SB 28, in which case Section 11 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 this act affirms for the state that which has been declared existing law by action of the courts, within the meaning of Section 17556 of the Government Code.

CHAPTER 900

An act to amend Sections 37002, 37005, 37006, 37011, 37012, 37013, 37015, 37016, 37020, and 37021 of, and to add Sections 37023, 37024, and 37025 to, the Public Resources Code, relating to conservation.

[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 37002 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37002. As used in this division, the following terms have the following meanings:

(a) ''Approval'' or ''approval for acceptance'' means the board's approval of the granting of a tax credit for a donation of property pursuant to the program.

(b) ''Board'' means the Wildlife Conservation Board created pursuant to Article 2 (commencing with Section 1320) of Chapter 4 of Division 20 of the Fish and Game Code.

(c) ''Conservation easement'' means a conservation easement, as defined by Section 815.1 of the Civil Code, that is contributed in perpetuity.

(d) ''Department'' means any entity created by statute within the Resources Agency and authorized to hold title to land.

(e) ''Designated nonprofit organization'' means a nonprofit organization qualified under Section 501(c)(3) of Title 26 of the United States Code that has as a principal purpose the conservation of land and water resources and that is designated by a local government or a department to accept property pursuant to this division in lieu of the local government or a department. In order to be eligible to receive a donation of property pursuant to this division, a nonprofit organization shall have experience in land conservation.

(f) ''Donee'' means any of the following:

(1) A department to which a donor has applied to donate property.

(2) A local government that has filed a joint application with a donor requesting approval of a donation of property to that local government.

(3) A designated nonprofit organization.

(g) ''Donor'' means a property owner that donates, or submits an application to donate, property pursuant to the program.

(h) ''Local government'' means any city, county, city and county, or any district, as defined in Section 5902 or in Division 26 (commencing with Section 35100), or any joint powers authority made up of one or more of those entities or those entities and departments.

(i) ''Program'' means the Natural Heritage Preservation Tax Credit Program authorized by this division.

(j) ''Property'' means any real property, and any perpetual interest therein, including land, conservation easements, and land containing water rights, as well as water rights.

(k) ''Secretary'' means the Secretary of the Resources Agency.

SEC. 2. Section 37005 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37005. The Wildlife Conservation Board shall implement the program. The board may request staff services from any department that submits an application and a proposal for a donation of property to the board.

SEC. 3. Section 37006 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37006. (a) Under the program, upon approval by the board, a donor may contribute qualified property to a donee and receive a tax credit for a portion of the value of the property, as provided in Sections 17053.30 and 23630 of the Revenue and Taxation Code.

(b) The board shall adopt guidelines or regulations to implement the program, including procedures for applications submitted pursuant to Chapter 4 (commencing with Section 37010) and for the evaluation of properties proposed to be contributed pursuant to the program. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the guidelines or regulations adopted pursuant to this section.

SEC. 4. Section 37011 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37011. At a minimum, each application shall contain all of the following:

(a) The identification of the donor and donee.

(b) A description of the property, including documentation of how the property meets the criteria and qualifies for acceptance under the program.

(c) A property appraisal meeting the requirements of Section 170 of Title 26 of the United States Code, setting forth the fair market value of the property.

(d) (1) A certification by the donor that the donor received no other valuable consideration for the donation of property.

(2) A certification by the donor that the contribution was not, and is not, required to satisfy a condition imposed upon the donor by any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, the mitigation of significant effects on the environment of 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)).

(e) A certification by the donor that the application discloses any known or suspected environmental conditions associated with the property.

SEC. 5. Section 37012 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37012. (a) Each donee shall evaluate applications submitted to it and prepare a plan for the board that sets forth the donee's priorities for acquisition of property that qualifies under the program. Consistent with the criteria established for the program, each donee may use its own priority lists and procedures in determining which properties or types of properties shall be given priority.

(b) Each donee or the board may request that the applicant supply further information reasonably necessary to allow the donee or the board to evaluate the proposed donation.

(c) The department may accept contributions of money from any taxpayer to pay or reimburse the costs of appraisal, escrow, title, and other transaction costs associated with the contribution of any particular property or set of properties, including any environmental assessments required by the department, and the costs of preparing any necessary management plan for the property or set of properties.

(d) Prior to acquiring an easement or other interest in land pursuant to this division, a public hearing shall be held by the donee, if the donee is a public agency, or by the board if the donee is a designated nonprofit organization, in the local community. Notice shall be given by the donee or the board to the county board of supervisors of the affected county, adjacent landowners, affected water districts, local municipalities, and other interested parties, as determined by the donee or the board.

(e) When submitting a donation of qualified property to the board for final approval, the donee shall provide the board with the fair market value of the property proposed for acceptance, based on appraisals that have been reviewed and approved by the Department of General Services.

SEC. 6. Section 37013 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37013. The board shall provide a list to the Joint Legislative Budget Committee and the Franchise Tax Board, in the form and manner determined by the Franchise Tax Board, of the names, taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, a legal description of the donated property, and the total amount of the tax credit approved for each donation.

SEC. 7. Section 37015 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37015. The board shall approve only contributions of properties that meet one or more of the following criteria:

(a) The property will help meet the goals of a habitat conservation plan, multispecies conservation plan, natural community conservation plan, or any other similar plan subsequently authorized by statute that is designed to benefit native species of plants, including, but not limited

to, protecting forests, old growth trees, or oak woodlands, and animals and development. In proposing and approving the acceptance of contributed property pursuant to this subdivision, the recovery benefits for listed species, the habitat value of the property, the value of the property as a wildlife corridor, and similar habitat-related considerations shall be the criteria on which the acceptance is based.

(b) The property will provide corridors or reserves for native plants and wildlife that will help improve the recovery possibilities of listed species and increase the chances that the species will recover sufficiently to be eligible to be removed from the list, or will help avoid the listing of species pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), or protect wetlands, waterfowl habitat, or river or stream corridors, or promote the biological viability of important California species.

(c) The property interest is a perpetual conservation easement over agricultural land, or is a permanent contribution of agricultural land, that is threatened by development and is located in an unincorporated area certified by the secretary to be zoned for agricultural use by the county. Property accepted pursuant to this subdivision shall be accepted pursuant to the California Farmland Conservancy Program Act established by Division 10.2 (commencing with Section 10200), pursuant to the agricultural conservation program of the Coastal Conservancy, or pursuant to the Bay Area Conservancy Program established pursuant to Chapter 4.5 (commencing with Section 31160) of Division 21.

(d) (1) The property interest is a water right, or land with an associated water right, and the contribution of the property will help improve the chances of recovery of a listed species, will reduce the likelihood that any species of fish or other aquatic organism will be listed pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code)) or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), will improve the protection of listed species, or will improve the viability and health of fish species of economic importance to the state. The donee receiving the water right, or land with an associated water right, shall ensure that it shall retain title to the water right, and that the water shall be used to fulfill the purposes for which the water right or land associated with a water right is being accepted.

(2) Any contribution of a water right that includes a change in the point of diversion, place of use, or purpose of use may be made only if the proposed change will not injure any legal user of the water involved and is made in accordance with either Chapter 10 (commencing with

Section 1700), or Chapter 10.5 (commencing with Section 1725), of Part 2 of Division 2 of the Water Code.

(e) The property will be used as a park or open space or will augment public access to or enjoyment of existing regional or local park, beach, or open-space facilities, or will preserve archaeological resources.

SEC. 8. Section 37016 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37016. (a) The board shall grant approval of a proposed contribution of property under the program only upon a determination that:

(1) (A) The donation of property satisfies the requirements for a qualified contribution pursuant to Section 170 of Title 26 of the United States Code. If only a portion (either an undivided fractional interest in the entire property or one or more discrete parcels) of a proposed conveyance of property satisfies the requirements of Section 170 of Title 26 of the United States Code, or if the property is sold for less than fair market value, only that portion, or the amount representing the difference between the amount paid by the donee and the fair market value, shall be eligible for the tax credit, to the extent permitted by Section 170(h) of Title 26 of the United States Code. The board may segregate eligible and ineligible interests in property proposed to be contributed pursuant to this division. The donor shall receive no other valuable consideration for the donation of property subject to the tax credit.

(B) For purposes of this division, if the property is proposed to be donated to satisfy a condition imposed upon the donor by any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, the mitigation of significant effects on the environment of 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)), that property shall not qualify for the credit provided in Section 17053.30 or 23630 of the Revenue and Taxation Code.

(2) There has been no release or threatened release of a hazardous material on the property, unless all of the following occur:

(i) A final remedy in response to the release has been approved by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of, Chapter 6.8 (commencing with Section 25300) of, or Chapter 6.85 (commencing with Section 25396) of, Division 20 of the Health and Safety Code, or the appropriate California regional water quality control board pursuant to Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

(ii) The donor or donee have agreed to implement the final remedy approved pursuant to clause (i).

(iii) The donor or donee have agreed to fund and have made adequate funding available to pay for the response action, as defined by Section 25323.3 of the Health and Safety Code.

(b) Notwithstanding paragraph (2) of subdivision (a), a donation of property containing hazardous materials may be accepted under the program without satisfying the requirements of paragraph (2) of subdivision (a) if the donee determines, based on written findings from the Department of Toxic Substances Control and the California regional water quality control board with jurisdiction over the property, that the hazardous materials present will pose no substantial risk to human health or the environment and no substantial risk of liability on the donee under the conditions under which the property will be used. The Department of Toxic Substances Control and the California regional water quality control board with jurisdiction over the property shall carry out their normal due diligence when developing the written findings that will be the basis for the written determination regarding the presence and risk of toxic materials on the property by the Department of Toxic Substances Control or the regional board, whichever is applicable. As used in this subdivision, ''hazardous materials'' has the same meaning as contained in subdivision (d) of Section 25260 of the Health and Safety Code.

SEC. 9. Section 37020 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37020. (a) Nothing in this division authorizes or increases the authority of any state or local public agency to use eminent domain to acquire private property.

(b) Nothing in this division diminishes existing land or water rights held by easement holders in any property proposed for donation.

SEC. 10. Section 37021 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:

37021. (a) If any property approved for acceptance pursuant to this division is later transferred by the donee, the use of the property shall be restricted by deed to the conservation purposes for which the property was contributed pursuant to the program. If the board determines that the conservation purposes for which the property was contributed can no longer be achieved due to significantly changed circumstances beyond the control of the donee that accepted the property, the proceeds of the sale shall be used by the donee that accepted the property to acquire land in California of equal or greater value and comparable public resources values, as determined by the board. The land acquired shall meet the criteria of Section 37015. Nothing in this division prohibits the transfer of donated property to a nonprofit organization that is qualified to manage the property for the purposes intended by this division, if the

terms of this section are met. Any local government or nonprofit organization seeking to sell land pursuant to this subdivision shall first obtain the approval of the board.

(b) Other than as provided by subdivision (a), property approved for acceptance pursuant to this division shall be used only for purposes consistent with Section 37015.

(c) (1) If any unauthorized use is made of the property after the property is donated to a local government or nonprofit organization pursuant to this program, the local government or nonprofit organization shall seek to terminate the unauthorized use and restore the conservation benefits for which the property was contributed. If the board determines that the unauthorized use has not been terminated and the conservation benefits fully restored within a reasonable period of time, the fee title owner of the property shall pay to the state the greater of the following:

(A) The fair market value of the property based on appraisals when accepted by the board.

(B) The fair market value of the property based on appraisals at the time of and based on the unauthorized use of the property.

(2) The department that is the donee or the board may seek injunctive relief to prevent the unauthorized use of the property, or may assume ownership or management of the property to assure that it is used in the manner originally authorized.

(d) The board shall develop a process to monitor the uses of any land that a local government or nonprofit organization receives pursuant to this division in order to ensure those uses are in conformance with the purposes for which the property is accepted.

SEC. 11. Section 37023 is added to the Public Resources Code, to read:

37023. The donee shall allow public access to the property to the extent that public access is consistent with the purposes for which the property is accepted. Before providing public access to the property, the donee shall develop a plan that minimizes the impact of public access on adjacent landowners in order to avoid infringement on the customary husbandry practices on adjacent or nearby agricultural or timber operations and that establishes a setback or buffer area, as necessary. This section does not require access to privately owned lands for which a conservation easement is contributed pursuant to this division unless the conservation easement provides for public access.

SEC. 12. Section 37024 is added to the Public Resources Code, to read:

37024. If the city, county, or city and county in which the property is located objects to acceptance of the property, the city, county, or city and county, as appropriate, may request the Director of Finance to disapprove the acceptance of the property. These objections may relate

to the city's, county's, or city and county's conservation and development policies and their general plans, the efficient use and delivery of infrastructure, and the potential loss of property tax revenue. The Director of Finance may disapprove acceptance after reviewing the objections of the city, county, or city and county. The Director of Finance shall provide a written explanation for his or her decision to the affected city, county, or city and county.

SEC. 13. Section 37025 is added to the Public Resources Code, to read:

37025. Any donee accepting property pursuant to the program shall own and maintain any setback or buffer area that may be necessary for the use of that property in accordance with this division, in order to avoid infringement on the customary husbandry practices on adjacent or nearby agricultural or timber operations.

CHAPTER 901

An act to amend Sections 3500, 3501, 3502.5, and 3508.5 of, to amend, renumber, and add Section 3509 of, to amend and renumber Section 3510 of, to add Section 3511 to, and to repeal and add Section 3507.1 of, the Government Code, relating to public employment.

[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 3500 of the Government Code is amended to read:

3500. (a) It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate a merit or civil service system or which provide for other methods of

administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies that provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

(b) The Legislature finds and declares that the duties and responsibilities of local agency employer representatives under this chapter are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the local agency employer representatives in performing those duties and responsibilities under this chapter are not reimbursable as state-mandated costs.

SEC. 2. Section 3501 of the Government Code is amended to read:

3501. As used in this chapter:

(a) ''Employee organization'' means any organization which includes employees of a public agency and which has as one of its primary purposes representing those employees in their relations with that public agency.

(b) ''Recognized employee organization'' means an employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency.

(c) Except as otherwise provided in this subdivision, ''public agency'' means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, ''public agency'' does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California.

(d) ''Public employee'' means any person employed by any public agency, including employees of the fire departments and fire services of counties, cities, cities and counties, districts, and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this state.

(e) ''Mediation'' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency

and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(f) ''Board'' means the Public Employment Relations Board established pursuant to Section 3541.

SEC. 3. Section 3502.5 of the Government Code is amended to read:

3502.5. (a) Notwithstanding Section 3502 or 3502.6, or any other provision of this chapter, or any other law, rule, or regulation, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization which has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, ordinances, and enactments, in accordance with this chapter. As used in this chapter, ''agency shop'' means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization.

(b) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the public agency and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after good faith negotiations, not to exceed 30 days, have taken place between the parties in an effort to reach agreement. An election that may not be held more frequently than once a year shall be conducted by the Division of Conciliation of the Department of Industrial Relations in the event that the public agency and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that is in effect, the recognized employee organization shall indemnify and hold the public agency harmless against any liability arising from any claims, demands, or other action relating to the public agency's compliance with the agency fee obligation.

(c) Any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal

to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the public agency and the public employee organization, or if the memorandum of understanding fails to designate the funds, then to any such fund chosen by the employee. Proof of the payments shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization.

(d) An agency shop provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during that term. Notwithstanding the above, the public agency and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on an agency shop agreement. The procedures in this subdivision are also applicable to an agency shop agreement placed in effect pursuant to subdivision (b).

(e) An agency shop arrangement shall not apply to management, confidential, or supervisory employees.

(f) Every recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement shall keep an adequate itemized record of its financial transactions and shall make available annually, to the public agency with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the Labor-Management Disclosure Act of 1959 covering employees governed by this chapter, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the public agency with a copy of the financial reports.

SEC. 4. Section 3507.1 of the Government Code is repealed.

SEC. 5. Section 3507.1 is added to the Government Code, to read:

3507.1. (a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a

public agency in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a public agency pursuant to Section 3507, a bargaining unit in effect as of the effective date of this section shall continue in effect unless changed under the rules adopted by a public agency pursuant to Section 3507.

SEC. 6. Section 3508.5 of the Government Code is amended to read:

3508.5. (a) Nothing in this chapter shall affect the right of a public employee to authorize a dues or service fees deduction from his or her salary or wages pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

(b) A public employer shall deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer.

(c) Agency fee obligations, including, but not limited to, dues or agency fee deductions on behalf of a recognized employee organization, shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the public employer and the recognized employee organization.

SEC. 7. Section 3509 of the Government Code is amended and renumbered to read:

3510. (a) The provisions of this chapter shall be interpreted and applied by the board in a manner consistent with and in accordance with judicial interpretations of this chapter.

(b) The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public employees.

SEC. 8. Section 3509 is added to the Government Code, to read:

3509. (a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c).

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(d) Notwithstanding subdivisions (a) to (c), inclusive, the employee relations commissions established by, and in effect for, the County of Los Angeles and the City of Los Angeles pursuant to Section 3507 shall have the power and responsibility to take actions on recognition, unit determinations, elections, and unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary, consistent with and pursuant to the policies of this chapter.

(e) This section shall not apply to employees designated as management employees under Section 3507.5.

(f) Implementation of this section is subject to the appropriation of funds for this purpose in the annual Budget Act.

(g) This section shall become operative on July 1, 2001.

SEC. 9. Section 3510 of the Government Code is amended and renumbered to read:

3500.5. This chapter shall be known and may be cited as the ''Meyers-Milias-Brown Act.''

SEC. 10. Section 3511 is added to the Government Code, to read:

3511. The changes made to Sections 3501, 3507.1, and 3509 of the Government Code by legislation enacted during the 1999–2000 Regular Session of the Legislature shall not apply to persons who are peace officers as defined in Section 830.1 of the Penal Code.

CHAPTER 902

An act to add Sections 19849.22 and 20687.2 to the Government Code, relating to peace officers, 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 19849.22 is added to the Government Code, to read:

19849.22. The Legislature finds and declares the following:

(a) If the state is to attract and retain a competent correction workforce, there is a compelling need to adequately compensate state peace officer/firefighter members who are supervisors.

(b) A supervisory compensation differential is necessary to compensate state peace officer/firefighter members who are supervisors

within the departments and boards of the Youth and Adult Correctional Agency for the greater responsibility of accomplishing correctional work through the direction of others.

(c) For purposes of measuring the compensation differential referred to in subdivision (b), the value of salaries and other economic benefits shall be considered in calculating comparative rates.

SEC. 2. Section 20687.2 is added to the Government Code, to read:

20687.2. Notwithstanding Section 20687, the normal rate of contribution for state peace officer/firefighter members who are supervisors within the boards and departments of the Youth and Adult Correctional Agency for pay periods beginning after April 30, 2001, shall be 8 percent of compensation in excess of eight hundred sixty-three dollars ($863) per month paid those members.

SEC. 3. The Department of Personnel Administration shall provide the fiscal committees of both houses of the Legislature and the Joint Legislative Budget Committee with a report, on or before March 31, 2001, on the adjustments necessary to implement the provisions of Section 19849.22 of the Government Code. That report shall describe the impacts of the recommended changes, after consideration of the impacts of Section 2 of this act, on the budgets of the affected departments and boards for the 2001–02 fiscal year. It is the intent of the Legislature to consider funding the adjustments necessary to eliminate or reduce remaining compaction in the correction workforce in the Budget Act of 2001.

SEC. 4. The sum of five hundred thousand dollars ($500,000) is appropriated from the General Fund to the Director of Finance for allocation by Executive order during the 2000–01 fiscal year to the departments and boards affected by Section 2 of this act.

CHAPTER 903

An act relating to local government finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. It is the intent of the Legislature that the allocation made by this act be a one-time appropriation, and that reform of the state and local fiscal relationship be made to ensure that the service needs at the local level are met. It is the further intent of the Legislature to

continue its efforts to reform the relationship between the state and local agencies, and to continue those efforts during the next legislative session.

SEC. 2. It is the intent of the Legislature to provide local agencies with financial relief in amounts that are proportionate to the amounts local agencies contribute to Educational Revenue Augmentation Funds.

SEC. 3. The sum of two hundred twelve million dollars ($212,000,000) is hereby appropriated to the Controller from the General Fund for allocation among counties, cities, cities and counties, and special districts during the 2000–01 fiscal year in accordance with Sections 4 and 5 of this act.

SEC. 4. For purposes of allocating one hundred million dollars ($100,000,000) of the moneys appropriated by Section 3 of this act, all of the following apply:

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

(1) No later than November 1, 2000, the county auditor reports to the Controller and the Director of Finance the total amount of ad valorem property tax revenue allocated from the county's Educational Revenue Augmentation Fund to school districts, community college districts, and county superintendents of schools for the 1999–2000 fiscal year.

(2) The county board of supervisors adopts an ordinance or resolution that specifies each amount of ad valorem property tax revenue shifted from a local agency within the county to the county's Educational Revenue Augmentation Fund for the 1999–2000 fiscal year, and the chairperson of the county board of supervisors reports those revenue shift amounts to the Controller and the Director of Finance in a manner that identifies the revenue shift amount for each local agency in the county.

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

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

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

No later than December 1, 2000, the county board of supervisors shall transmit the ordinance or resolution adopted pursuant to this paragraph to the Director of Finance. The Controller shall promulgate guidelines for the making of reports as required by this subdivision, including listing government entities as named in their annual financial transactions. To the extent feasible, counties shall report the requested information electronically.

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

(1) Perform the following calculations:

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

(B) Multiply the amount determined in accordance with subparagraph (A) by one hundred million dollars ($100,000,000).

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

(2) No later than January 1, 2001, the Controller shall, from the appropriated revenues subject to this section, allocate to the county the amount determined for that county pursuant to paragraph (1).

(c) In each county that receives revenue in accordance with subdivision (b), the county auditor shall allocate that revenue to those local agencies in the county that contributed a positive amount to the county's Educational Revenue Augmentation Fund for the 1999–2000 fiscal year. The allocation share for each recipient local agency shall be determined pursuant to the following calculations:

(1) Divide the amount of revenue shifted for the 1999–2000 fiscal year from the local agency to the county's Educational Revenue Augmentation Fund by the total amount of revenue shifted for the 1999–2000 fiscal year to the county's Educational Revenue Augmentation Fund from all local agencies in the county contributing a positive amount to that fund.

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

SEC. 5. For purposes of allocating one hundred twelve million dollars ($112,000,000) of the moneys appropriated by Section 3 of this act, all of the following apply:

(a) The Department of Finance shall, no later than November 1, 2000, provide to the Controller its estimate, as of July 1, 2000, of the population of each of the following:

(1) Each county in the state, with respect to both the entire county and the unincorporated portion of the county.

(2) Each city in the state.

(3) Each city and county in the state.

(4) The state as a whole.

(b) The Controller shall, no later than December 1, 2000, allocate ten million dollars ($10,000,000) among the counties and any city and county in accordance with each county's or city and county's proportionate share of the total population of the state.

(c) The Controller shall, no later than December 1, 2000, allocate one hundred million dollars ($100,000,000) among the counties and the cities in the state in accordance with the proportionate share, of the unincorporated area of each county and of each city, of the total population of the state. For purposes of this subdivision, a city and county is deemed to be a city.

(d) The Controller shall, no later than January 1, 2001, allocate two million dollars ($2,000,000) exclusively among those recreation and park districts formed pursuant to Chapter 4 (commencing with Section 5780) of Division 5 of the Public Resources Code, for which the boards of directors are either appointed or elected, as provided in that chapter; and among those independent library special districts formed pursuant to Chapter 3 (commencing with Section 18300) of Part 11 of Division 1 of Title 1 of the Education Code or Chapter 8 (commencing with Section 19400) of Part 11 of Division 1 of Title 1 of the Education Code or Chapter 9 (commencing with Section 19600) of Part 11 of Division 1 of Title 1 of the Education Code that contributed a positive amount to the county's Educational Revenue Augmentation Fund for the 1999–2000 fiscal year. The allocation share for each recipient independent recreation and park or library special district shall be determined pursuant to the following calculations:

(1) Divide the amount of revenue shifted for the 1999–2000 fiscal year from each independent recreation and park or library special district to an Educational Revenue Augmentation Fund by the total amount of revenue shifted for the 1999–2000 fiscal year to all Educational Revenue Augmentation Funds in the state by all independent recreation and park and library special districts contributing a positive amount to those funds.

(2) Multiply each ratio determined pursuant to paragraph (1) by the amount of revenues allocated to independent recreation and park and library special districts pursuant to this subdivision.

SEC. 6. It is the intent of the Legislature that any dollars not expended from the Property Tax Administration Loan Program shall be used to meet the obligation specified in subdivision (b) of Section 5.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order to allocate essential funds to local agencies as soon as possible it is necessary that this act take effect immediately.

CHAPTER 904

An act to amend Section 22810 of, and to add Section 22821.1 to, the Government Code, relating to retirement, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 22810 of the Government Code is amended to read:

22810. An employee or annuitant may, under eligibility rules as the board may by regulation prescribe, enroll in an approved health benefits plan, either as an individual or for self and family, except that an employee of a contracting agency, or an annuitant who retired while an employee or is the beneficiary of an employee, may enroll only in a health benefits plan for which the board has contracted. With respect to state officers and employees, the regulations shall provide that every employee or annuitant enrolled in a health benefits plan shall be enrolled in a major medical plan or shall provide for inclusion of major medical benefits in health benefit plans. The regulations may provide for the exclusion of employees on the basis of the nature and type of their employment or conditions pertaining thereto, but not limited to, short-term appointments, seasonal or intermittent employment, and employment of a like nature, but no employee or group of employees shall be excluded solely on the basis of the hazardous nature of the employment. Any enrollment shall authorize the deduction of the contributions required under this part from the employee's or annuitant's salary or retirement allowance.

Any annuitant who satisfies the requirement to retire within 120 days of separation as specified in subdivision (e) of Section 22754 may continue his or her enrollment, enroll within 60 days of retirement, or enroll during any future open enrollment period, as provided by regulations of the board, without discrimination as to premium rates or benefit coverage. If the survivor of an annuitant who satisfied the requirement to retire within 120 days of separation as specified in

subdivision (e) of Section 22754 is also an annuitant as defined in this part, he or she shall also be eligible to enroll within 60 days of the annuitant's death or during any future open enrollment period, as provided by regulation of the board, without discrimination as to premium rates or benefit coverage. The effective date of enrollment of persons who, at the time of becoming an annuitant or survivor, were not enrolled in a health benefits plan under this part shall be a prospective date determined by the board.

Any permanent intermittent employee and any employee who works less than full time may continue his or her enrollment while retired from state employment if (1) he or she was enrolled prior to separation from state employment and (2) he or she lost eligibility prior to separation but continued his or her coverage under the federal law.

Any annuitant who becomes entitled to the survivor allowance under Section 21571 at age 62 and who was enrolled in a health benefits plan at the death of the member on whose account the survivor allowance is payable may enroll in a health benefits plan without discrimination as to premium rates or benefit coverage.

In the case of the death of an employee after application has been filed for coverage of family members but prior to the effective date of coverage, family members shall be deemed to have been covered on the date of the death of the employee, and if one of the family members is an annuitant he or she shall be enrolled as if the coverage applied for were continued without discrimination as to premium rates or benefit coverage.

The board shall, by rule and regulation, make whatever provisions it deems necessary to eliminate or minimize the impact of adverse selection which would affect any plans approved or contracted for, because of enrollment of annuitants.

SEC. 2. Section 22821.1 is added to the Government Code, to read:

22821.1. All eligible family members of a deceased employee of a contracting agency who are eligible for coverage hereunder on the date of the employee's death shall be deemed to be annuitants under subdivision (e) of Section 22754 for the purpose of enrollment, pursuant to Section 22810, and continuing their enrollment hereunder.

With respect to those eligible family members who enroll, a contracting agency shall remit the amounts required under subdivision (2) of Section 22826 and Section 22831 as well as the total amount of premium required from employer and enrollees hereunder in accordance with regulations of the board. Enrollment of those annuitants shall be continuous as of the effective date of their enrollment specified in Section 22810 so long as they meet the eligibility requirements of subdivision (f) of Section 22754 and regulations pertinent thereto. Failure to timely pay the required premiums and costs shall terminate

coverage without recourse to reenrollment, and the cancellation of coverage by an annuitant will be final without option to reenroll. The contracting agency may elect to require the family members to pay all or any part of the employer premium for the enrollment.

This section shall apply to a contracting agency only upon the filing with the board of a resolution of its governing board electing to be subject to this section.

CHAPTER 905

An act to amend Sections 304, 313, 502, 506, 507, 508, 511, 605, 607, 705, 706, and 707 of, to add Sections 314.5 and 503.1 to, and to repeal Section 602 of, the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), relating to water.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 304 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 304. ''Board member'' or ''member'' means a member of the board.

(a) ''Alternate member'' or ''alternate'' means the nominee receiving the second highest number of votes in an election of a city member or the person appointed by a water district to act in the place of a member if that member is absent or the member has vacated the office.

(b) ''City member'' means a member elected by the cities with pumping rights or the cities without pumping rights.

(c) ''Water district member'' means a member appointed by one of the water districts.

(d) ''Producer member'' means a member who, pursuant to the judgment, is a designee of a producer, other than a water district described in Section 503 or a city described in Section 504, that is a holder of not less than 5 percent of the prescriptive pumping rights in the basin.

SEC. 2. Section 313 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 313. ''Public water system'' means any entity that operates a public water system, as defined in Section 116275 of the Health and Safety Code.

SEC. 3. Section 314.5 is added to the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), to read:

314.5. ''Water association'' means the San Gabriel Valley Water Association.

SEC. 4. Section 502 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 502. (a) The board shall be composed of seven members, three of whom are appointed by the water districts, two of whom are elected by the cities, and two of whom are producer members appointed pursuant to Section 503.1.

(b) No person who, directly or indirectly, at the time of election or appointment, receives, or during the two-year period immediately preceding election or appointment received, 10 percent or more of his or her income from any person or public entity subject to regulation by, or that receives grants from or contracts for work with, the authority may serve as a member of the authority.

(c) Notwithstanding subdivision (b), a producer member may receive 10 percent or more of his or her income from the producer that he or she represents as a member of the authority and that is subject to regulation by the authority.

SEC. 5. Section 503.1 is added to the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), to read:

503.1. Two producer members and two alternates shall be appointed by the board of directors of the Water Association.

SEC. 6. Section 506 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 506. An alternate member shall act in the place, and perform all of the duties, of the city member, producer member, or water district member selected by the same cities or water district if that city member, producer member, or water district member is absent from a meeting of the authority or has vacated his or her office until the vacancy is filled pursuant to this act.

SEC. 7. Section 507 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 507. (a) Except as provided in subdivisions (b) and (c), the terms of the members shall commence on the first Monday in January and each member shall hold office for a term of four years and until the successor takes office.

(b) With respect to the initial board members, the terms of the member appointed by the Three Valleys Municipal Water District and the member elected by the cities without pumping rights shall expire on January 1, 1995, and the terms of the remaining members shall expire on January 1, 1997.

(c) The terms of the initial producer members and alternates shall commence on the first business day after the appointment of the producer members and alternates. The terms of the initial producer members and alternates shall expire on the fourth January 1 following commencement of their term.

SEC. 8. Section 508 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 508. Any vacancy in the office of a member shall be filled as follows:

(a) A vacancy in the office of a member or alternate who was appointed by a water district shall be filled by the appointing water district by a resolution adopted by a majority vote of the district governing board. The person appointed to fill the vacancy shall meet the qualifications applicable to the vacant office and shall serve for the remaining term of the vacant office.

(b) A vacancy in the office of a member or alternate who was elected by cities shall be filled by a special election called by the authority. Only those cities which elected the member or alternate to the office in which the vacancy has occurred are eligible to vote. Nominations and balloting shall be conducted in the same manner as a regular election, except that the date of the election and time periods shall be as prescribed by the authority. The member or alternate elected to fill a vacancy shall meet the qualifications applicable to the vacant office and shall serve for the remaining term of the vacant office.

(c) A vacancy in the office of a producer member or alternate who was appointed by the board of directors of the Water Association shall be filled pursuant to Section 503.1.

SEC. 9. Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 511. (a) Except as otherwise provided, all actions of the board shall be approved by an affirmative vote of majority of all of the members.

(b) Notwithstanding subdivision (a), an affirmative vote of a majority of all of the members shall include one city member, one producer member, and one water district member to take any of the following actions:

(1) Adopt the authority's budget.

(2) Pursue legal action pursuant to subdivision (c) of Section 407.

(3) Impose an annual pumping right assessment pursuant to Section 605 or to continue an assessment pursuant to Section 614.

(4) Make a determination pursuant to subdivision (a) or (d) of Section 707.

SEC. 10. Section 602 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is repealed.

SEC. 11. Section 605 of the San Gabriel Basin Water Quality Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 605. The authority may impose an annual pumping right assessment, not to exceed thirteen dollars ($13) per acre-foot, to construct facilities and acquire property, to retire promissory notes, bond anticipation notes, bonds and certificate of participation and other evidences of indebtedness, to pay for administrative costs, and to pay for operations and maintenance of projects constructed by and for the authority. The authority shall impose an assessment pursuant to this section for operation and maintenance purposes only if, and to the extent that, money for operation and maintenance purposes is not received from other sources after reasonable efforts have been made to secure that funding. However, no assessment shall be imposed for water extracted pursuant to a conjunctive use storage agreement between the producer and the water master, which the authority has approved.

SEC. 12. Section 607 of the San Gabriel Basin Water Quality Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 607. (a) The authority may exempt a producer from all or part of the annual pumping right assessment established pursuant to Section 605 for water pumped and treated from a contaminated well if, with the prior approval of the authority for the project, the producer funds the design and construction of the wellhead treatment system for that well.

(b) The board shall annually consider exempting pursuant to subdivision (a) when it adopts the authority's budget.

SEC. 13. Section 705 of the San Gabriel Water Basin Quality Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 705. On or before January 1, 2004, the State Water Resources Control Board, in consultation with the Los Angeles Regional Water Quality Control Board, shall report to the Legislature on the progress of the authority with regard to actions undertaken pursuant to Article 4 (commencing with Section 401), and any recommendations regarding actions for improving the progress of the authority.

SEC. 14. Section 706 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 706. (a) Except as provided in this section, this act shall remain in effect only until July 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2005, deletes or extends that date.

(b) Upon the repeal of this act, the assets and debts of the authority shall be administered as follows:

(1) The Los Angeles Regional Water Quality Control Board shall dispose of the property and assets as appropriate. The Los Angeles Regional Water Quality Control Board shall receive reimbursement for actual costs incurred related to the disposition of the property and assets.

The cost recovery shall be from the proceeds of the disposition pursuant to this section. The proceeds, if any, of the disposition shall be transferred to the Treasurer to be applied to pay the debts of the authority and, if any proceeds remain, shall be transferred to the Treasurer for deposit in the Hazardous Substance Cleanup Fund for use in financing groundwater contamination investigation and remediation in the basin. Preference shall be given in the disposition of assets of the authority to transfers to producers who may be able to use the assets for the benefit of water distribution systems and to provide for continued operation and maintenance of the assets in order to further the purposes of this act.

(2) The Treasurer shall administer the payment of debts of the authority. The Treasurer shall apply the proceeds from the disposition of assets to the payment of the debts. If debts remain after application of the proceeds from disposition of assets, the Treasurer may continue to collect, in lieu of the authority, the pumping right assessments authorized under either (A) Section 602 if the debt relates to administrative costs or (B) Section 605 if the debt is to repay warrants, notes, bonds, and other evidences of indebtedness, or both, to make payments pursuant to leases or installment sale agreements in connection with certificates of participation, to pay for operation and maintenance costs of facilities, and to make payments pursuant to any other financial obligations. All provisions set forth in Article 6 (commencing with Section 601) relating to the levy and collection of the pumping right assessments are not repealed and shall continue in effect until the debts of the authority are paid, as determined by the Treasurer, who shall notify the Secretary of State. Upon receipt by the Secretary of State of the Treasurer's notice, Article 6 (commencing with Section 601) is repealed. The Treasurer's authority to levy and collect assessments under this act is limited according to the provisions of this act and shall cease when all debts of the authority have been paid.

SEC. 15. Section 707 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 707. (a) The board shall commence procedures to institute a limited function status if the board determines, following a public hearing, upon 30 days' notice, that its actions are in accordance with both of the following or that it has secured funding to comply with both of the following:

(1) The basinwide groundwater quality management and remediation plan developed and adopted pursuant to Section 406.

(2) Relevant records of decision issued by the United States Environmental Protection Agency that apply within the boundaries of the authority.

(b) If the board makes the determination described in subdivision (a), the authority shall commence negotiations with the water master or a

water district selected by the board for a contract, pursuant to which the water master or a water district will act as an operating agency. The contract shall include provisions to do all of the following:

(1) Designate the water master or a water district to act as the operating agency.

(2) Require the operating agency to do all of the following:

(A) Perform administrative services necessary to carry out the functions and duties that the authority would otherwise perform, relating to the funding, operating, maintenance, and repair of the authority's groundwater remediation projects.

(B) Monitor the progress of the groundwater remediation.

(C) Prepare data and reports for submission to the board presenting the status of the authority's projects and the groundwater quality including a report on the accordance of the operating agency's actions with both of the following:

(i) The basinwide groundwater quality management and remediation plan developed and adopted pursuant to Section 406.

(ii) Relevant records of decision issued by the United States Environmental Protection Agency that apply within the boundaries of the authority.

(3) Provide for the budgeting and reimbursement of the costs and expenses incurred by the operating agency in carrying out the functions and duties of the authority, including a reasonable amount for overhead.

(4) Provide that the use of any funds paid by the authority to the operating agency shall be limited to the reimbursement of the operating agency for costs incurred pursuant to the contract.

(5) Provide that the board, if it determines that the authority is required to return to full function pursuant to subdivision (d), may terminate the contract with the operating agency.

(c) After execution of the operations contract, the authority shall operate in accordance with limited function status. While the authority is operating according to limited function status, the authority may only perform the following functions:

(1) Receive funds from those sources indicated in subdivision (d) of Section 401.

(2) Establish, levy, and collect pumping rights assessments pursuant to Sections 602 and 605.

(3) Satisfy the obligations of the authority under any bonds, notes, warrants, or other evidence of indebtedness or under any certificates of participation.

(4) Oversee the operating agency's performance of, and enforce the operating agency's obligations under, the operations contract entered into pursuant to subdivision (b), and reimburse the operating agency under that subdivision.

(5) Enter into separate contracts, at the discretion of the board, for other outside services, including, but not limited to, professional, consulting, operating, maintenance, repair, and replacement services and supplies.

(6) Conduct elections for the elected members of the board.

(7) Conduct meetings of the board, not less than semiannually, to perform the limited functions of the authority, including all of the following:

(A) Budget for, and provide reimbursement to, the operating agency.

(B) Receive and review reports from the operating agency and determine if any of the conditions described in Section 708 have been met.

(C) Set pumping rights assessments.

(D) Act upon any other matters within the functions of the authority while it operates under limited function status.

(8) Perform any other administrative functions and other duties reasonably necessary to carry out the limited functions of the authority.

(d) The board may restore the authority to full function if it determines, following a public hearing, and upon 30 days' notice, that a return to full function is required to allow the authority to modify existing projects, to undertake new projects to effectively remedy Superfund-related groundwater contamination, or to take other actions, including, but not limited to, securing funding, to be in accordance with both of the following:

(1) The basinwide groundwater quality management and remediation plan developed and adopted pursuant to Section 406.

(2) Relevant records of decision issued by the United States Environmental Protection Agency that apply within the boundaries of the authority.

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.

CHAPTER 906

An act to add Section 1281.1 to, and to add Title 9.5 (commencing with Section 1299) to Part 3 of, the Code of Civil Procedure, relating to public employment relations.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 29, 2000.]

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

SECTION 1. Section 1281.1 is added to the Code of Civil Procedure, to read:

1281.1. For the purposes of this article, any request to arbitrate made pursuant to subdivision (a) of Section 1299.4 shall be considered as made pursuant to a written agreement to submit a controversy to arbitration.

SEC. 2. Title 9.5 (commencing with Section 1299) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 9.5. ARBITRATION OF FIREFIGHTER AND LAW ENFORCEMENT OFFICER LABOR DISPUTES

1299. The Legislature hereby finds and declares that strikes taken by firefighters and law enforcement officers against public employers are a matter of statewide concern, are a predictable consequence of labor strife and poor morale that is often the outgrowth of substandard wages and benefits, and are not in the public interest. The Legislature further finds and declares that the dispute resolution procedures contained in this title provide the appropriate method for resolving public sector labor disputes that could otherwise lead to strikes by firefighters or law enforcement officers.

It is the intent of the Legislature to protect the health and welfare of the public by providing impasse remedies necessary to afford public employers the opportunity to safely alleviate the effects of labor strife that would otherwise lead to strikes by firefighters and law enforcement officers. It is further the intent of the Legislature that, in order to effectuate its predominant purpose, this title be construed to apply broadly to all public employers, including, but not limited to, charter cities, counties, and cities and counties in this state.

It is not the intent of the Legislature to alter the scope of issues subject to collective bargaining between public employers and employee organizations representing firefighters or law enforcement officers.

The provisions of this title are intended by the Legislature to govern the resolution of impasses reached in collective bargaining between public employers and employee organizations representing firefighters and law enforcement officers over economic issues that remain in dispute over their respective interests. However, the provisions of this title are not intended by the Legislature to be used as a procedure to determine the rights of any firefighter or law enforcement officer in any grievance initiated as a result of a disciplinary action taken by any public

employer. The Legislature further intends that this title shall not apply to any law enforcement policy that pertains to how law enforcement officers interact with members of the public or pertains to police-community relations, such as policies on the use of police powers, enforcement priorities and practices, or supervision, oversight, and accountability covering officer behavior toward members of the public, to any community-oriented policing policy or to any process employed by an employer to investigate firefighter or law enforcement officer behavior that could lead to discipline against any firefighter or law enforcement officer, nor to contravene any provision of a charter that governs an employer that is a city, county, or city and county, which provision prescribes a procedure for the imposition of any disciplinary action taken against a firefighter or law enforcement officer.

1299.2. This title shall apply to all employers of firefighters and law enforcement officers.

1299.3. As used in this title:

(a) ''Employee'' means any firefighter or law enforcement officer represented by an employee organization defined in subdivision (b).

(b) ''Employee organization'' means any organization recognized by the employer for the purpose of representing firefighters or law enforcement officers in matters relating to wages, hours, and other terms and conditions of employment within the scope of arbitration.

(c) ''Employer'' means any local agency employing employees, as defined in subdivision (a), or any entity, except the State of California, acting as an agent of any local agency, either directly or indirectly.

(d) ''Firefighter'' means any person who is employed to perform firefighting, fire prevention, fire training, hazardous materials response, emergency medical services, fire or arson investigation, or any related duties, without respect to the rank, job title, or job assignment of that person.

(e) ''Law enforcement officer'' means any person who is a peace officer as defined in Section 830.1 of, subdivisions (b) and (d) of Section 830.31 of, subdivisions (a), (b), and (c) of Section 830.32 of, subdivisions (a), (b), and (d) of Section 830.33 of, subdivisions (a) and (b) of Section 830.35 of, subdivision (a) of Section 830.5 of, and subdivision (a) of Section 830.55 of, the Penal Code, without respect to the rank, job title, or job assignment of that person.

(f) ''Local agency'' means any governmental subdivision, district, public and quasi-public corporation, joint powers agency, public agency or public service corporation, town, city, county, city and county, or municipal corporation, whether incorporated or not or whether chartered or not.

(g) ''Scope of arbitration'' means economic issues, including salaries, wages and overtime pay, health and pension benefits, vacation

and other leave, reimbursements, incentives, differentials, and all other forms of remuneration. The scope of arbitration shall not include any issue that is protected by what is commonly referred to as the ''management rights'' clause contained in Section 3504 of the Government Code. Notwithstanding the foregoing, any employer subject to this title that is not exempt under Section 1299.9 may supersede this subdivision by adoption of an ordinance that establishes a broader definition of ''scope of arbitration.''

1299.4. (a) If an impasse has been declared after the parties have exhausted their mutual efforts to reach agreement over matters within the scope of arbitration, and the parties are unable to agree to the appointment of a mediator, or if a mediator agreed to by the parties is unable to effect settlement of a dispute between the parties after his or her appointment, the employee organization may, by written notification to the employer, request that their differences be submitted to an arbitration panel.

(b) Within three days after receipt of the written notification, each party shall designate a person to serve as its member of an arbitration panel. Within five days thereafter, or within additional periods to which they mutually agree, the two members of the arbitration panel appointed by the parties shall designate an impartial person with experience in labor and management dispute resolution to act as chairperson of the arbitration panel.

(c) In the event that the parties are unable or unwilling to agree upon a third person to serve as chairperson, the two members of the arbitration panel shall jointly request from the American Arbitration Association a list of seven impartial and experienced persons who are familiar with matters of employer-employee relations. The two panel members may as an alternative, jointly request a list of seven names from the California State Mediation and Conciliation Service, or a list from either entity containing more or less than seven names, so long as the number requested is an odd number. If after five days of receipt of the list, the two panel members cannot agree on which of the listed persons shall serve as chairperson, they shall, within two days, alternately strike names from the list, with the first panel member to strike names being determined by lot. The last person whose name remains on the list shall be chairperson.

(d) Employees as defined by this chapter shall not be permitted to engage in strikes that endanger public safety.

(e) No employer shall interfere with, intimidate, restrain, coerce, or discriminate against an employee organization or employee because of an exercise of rights under this title.

(f) No employer shall refuse to meet and confer or condition agreement upon a memorandum of understanding based upon an employee organization's exercise of rights under this title.

1299.5. (a) The arbitration panel shall, within 10 days after its establishment or any additional periods to which the parties agree, meet with the parties or their representatives, either jointly or separately, make inquiries and investigations, hold hearings, and take any other action including further mediation, that the arbitration panel deems appropriate.

(b) For the purpose of its hearings, investigations, or inquiries, the arbitration panel may subpoena witnesses, administer oaths, take the testimony of any person, and issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any subject matter before the panel.

1299.6. (a) The arbitration panel shall direct that five days prior to the commencement of its hearings, each of the parties shall submit the last best offer of settlement as to each of the issues within the scope of arbitration, as defined in this title, made in bargaining as a proposal or counterproposal and not previously agreed to by the parties prior to any arbitration request made pursuant to subdivision (a) of Section 1299.4. The arbitration panel, within 30 days after the conclusion of the hearing, or any additional period to which the parties agree, shall separately decide on each of the disputed issues submitted by selecting, without modification, the last best offer that most nearly complies with the applicable factors described in subdivision (c). This subdivision shall be applicable except as otherwise provided in subdivision (b).

(b) Notwithstanding the terms of subdivision (a), the parties by mutual agreement may elect to submit as a package the last best offer of settlement made in bargaining as a proposal or counterproposal on those issues within the scope of arbitration, as defined in this title, not previously agreed to by the parties prior to any arbitration request made pursuant to subdivision (a) of Section 1299.4. The arbitration panel, within 30 days after the conclusion of the hearing, or any additional period to which the parties agree, shall decide on the disputed issues submitted by selecting, without modification, the last best offer package that most nearly complies with the applicable factors described in subdivision (c).

(c) The arbitration panel, unless otherwise agreed to by the parties, shall limit its findings to issues within the scope of arbitration and shall base its findings, opinions, and decisions upon those factors traditionally taken into consideration in the determination of those matters within the scope of arbitration, including but not limited to the following factors, as applicable:

(1) The stipulations of the parties.

(2) The interest and welfare of the public.

(3) The financial condition of the employer and its ability to meet the costs of the award.

(4) The availability and sources of funds to defray the cost of any changes in matters within the scope of arbitration.

(5) Comparison of matters within the scope of arbitration of other employees performing similar services in corresponding fire or law enforcement employment.

(6) The average consumer prices for goods and services, commonly known as the Consumer Price Index.

(7) The peculiarity of requirements of employment, including, but not limited to, mental, physical, and educational qualifications; job training and skills; and hazards of employment.

(8) Changes in any of the foregoing that are traditionally taken into consideration in the determination of matters within the scope of arbitration.

1299.7. (a) The arbitration panel shall mail or otherwise deliver a copy of the decision to the parties. However, the decision of the arbitration panel shall not be publicly disclosed, and shall not be binding, for a period of five days after service to the parties. During that five-day period, the parties may meet privately, attempt to resolve their differences and, by mutual agreement, amend or modify the decision of the arbitration panel.

(b) At the conclusion of the five-day period, which may be extended by the parties, the arbitration panel's decision, as may be amended or modified by the parties pursuant to subdivision (a), shall be publicly disclosed and shall be binding on all parties, and, if specified by the arbitration panel, be incorporated into and made a part of any existing memorandum of understanding as defined in Section 3505.1 of the Government Code.

1299.8. Unless otherwise provided in this title, Title 9 (commencing with Section 1280) shall be applicable to any arbitration proceeding undertaken pursuant to this title.

1299.9. (a) The provisions of this title shall not apply to any employer that is a city, county, or city and county, governed by a charter that was amended prior to January 1, 2001, to incorporate a procedure requiring the submission of all unresolved disputes relating to wages, hours, and other terms and conditions of employment within the scope of arbitration to an impartial and experienced neutral person or panel for final and binding determination, provided however that the charter amendment is not subsequently repealed or amended in a form that would no longer require the submission of all unresolved disputes relating to wages, hours, and other terms and conditions of employment

within the scope of arbitration to an impartial and experienced neutral person or panel, for final and binding determination.

(b) Unless otherwise agreed to by the parties, the costs of the arbitration proceeding and the expenses of the arbitration panel, except those of the employer representative, shall be borne by the employee organization.

SEC. 3. The Legislature finds and declares that the duties of local agency employer representatives under this act are substantially similar to the duties required under present collective bargaining procedures and therefore the costs incurred by the local agency employer representatives in performing those duties are not reimbursable as state-mandated costs.

CHAPTER 907

An act to add Section 7943 to the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 7943 is added to the Public Utilities Code, to read:

7943. (a) It is the intent of the Legislature that when the commission has no reasonable alternative other than to create a new area code, that the commission do so in a way that creates the least inconvenience for customers.

(b) On or before March 31, 2001, the commission shall request that the Federal Communications Commission grant authority for the commission to order telephone corporations to assign telephone numbers dedicated to wireless and data usage to a separate area code and to permit seven digit dialing within that technology-specific area code and the underlying preexisting area code or codes.

(c) Before approving any new area code, the commission shall first perform a telephone utilization study and implement all reasonable telephone number conservation measures.

(d) If the commission receives the grant of authority set forth in subdivision (a) and determines that further area code relief is needed, the commission shall exercise the authority granted to it in subdivision (a) unless it finds at least one of the following:

(1) Exercising the authority granted by subdivision (a) would be more disruptive to the customers where area code relief has been determined to be necessary.

(2) Exercising the authority granted by subdivision (a) will not adequately extend the life of the area code where relief has been determined to be necessary.

(e) The commission may not implement any authority granted by the Federal Communications Commission pursuant to subdivision (a), in a manner that impairs the ability of a customer to have number portability.

CHAPTER 908

An act to amend Sections 229.5, 362, and 827 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 229.5 of the Welfare and Institutions Code is amended to read:

229.5. (a) Notwithstanding any other provision of law, a juvenile justice commission may inquire into the operation of any group home that serves wards or dependent children of the juvenile court and is located in the county or region the commission serves. The commission may review the safety and well-being of wards or dependent children placed in the group home and the program and services provided in relation to the home's published program statement.

(b) In conducting its review, the commission shall respect the confidentiality of minors' records and other information protected under other provisions of law. It may review court or case records of a child provided it keeps the identities of minors named in those records confidential, and may review the financial records of a group home. However, the commission may not review the personnel records of employees or the records of donors to the group home.

(c) The commission shall give the group home manager at least 24 hours' advance notice of a visit to a group home. If the commission believes that there is a serious violation of applicable licensing laws or regulations or that residents of a group home are in danger of physical or mental abuse, abandonment or other substantial threat to their health and safety, the commission shall notify the Community Care Licensing Division of the State Department of Social Services for appropriate

action, shall consult with the presiding judge of the juvenile court and chief probation officer as to whether or not a visit is appropriate, and shall notify other juvenile justice commissions of its actions, as appropriate.

(d) Upon the completion of a visit, if the commission finds any condition in the group home that poses a danger to its residents or otherwise violates any applicable law, ordinance, or regulation, the commission shall verbally advise the group home manager of its findings, unless it determines that the advisement could be detrimental to the children placed there, and shall send written confirmation of its findings to the group home manager within 14 days. The commission may also report its findings to the presiding judge of the juvenile court, chief probation officer, State Department of Social Services, or other juvenile justice commissions as appropriate. A group home manager may meet with the juvenile justice commission, chief probation officer, county welfare director, juvenile court, or the State Department of Social Services to resolve any problem or to submit a plan of correction.

SEC. 2. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies or private service providers, or both, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency or private service provider that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency or private service provider is joined, the court shall not impose duties upon the agency or private service provider beyond those mandated by law. Nothing in this section shall prohibit agencies or private service providers that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency or private service provider has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) ''Private service provider'' means any agency or individual that receives federal, state, or local government funding or reimbursement for providing services directly to foster children.

SEC. 2.5. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies or private service providers, or both, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency or private service provider that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency or private service provider is joined, the court shall not impose duties upon the agency or private service provider beyond those mandated by law. Nothing in this section shall prohibit agencies or private service providers that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With

respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency or private service provider has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) Notwithstanding subdivision (c), no prospective adoptive parent or birth relative, including a birth parent, shall be required by court order to enter into a postadoption contact agreement or into mediation or any other negotiation intended to develop a postadoption contact agreement.

(e) ''Private service provider'' means any agency or individual that receives federal, state, or local government funding or reimbursement for providing services directly to foster children.

SEC. 3. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are

actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(L) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (K), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's

probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to

the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 3.5. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall

not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) A judge assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, and a child custody evaluator appointed by the court pursuant to Section 3118 of the Family Code.

(L) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(M) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation,

the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (L), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent

of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school,

is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 362 of the Welfare and Institutions Code proposed by both this bill and AB 2921. 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 362 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2921, in which case Section 2 of this bill shall not become operative.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and SB 1716. 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 827 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1716, in which case Section 3 of this bill shall not become operative.

CHAPTER 909

An act to amend Sections 358.1, 361.2, 362.1, 366, 366.1, 366.3, 388, 16002, and 16501.1 of, and to add Section 16004 to, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 29, 2000.]

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

SECTION 1. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the child has siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(1) The nature of the relationship between the child and his or her siblings.

(2) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(3) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(4) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(5) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interest.

(e) Whether the child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(f) Whether the parent has been advised of his or her option to participate in adoption planning and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(g) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 1.5. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the child has siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(1) The nature of the relationship between the child and his or her siblings.

(2) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(3) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(4) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(5) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships including, but not limited to, whether the siblings were raised together in the same home, whether the

siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interest.

(e) Whether the child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(f) Whether the parent has been advised of his or her option to participate in adoption planning, including the option to enter into a postadoption contact agreement as described in Section 8714.7 of the Family Code, and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(g) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 2. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

(b) If the court places the child with that parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a child pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the child is taken from the physical custody of the child's parent or guardian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a child to be placed in a county other than the child's parent's or guardian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the child's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the child, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a child is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the child, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the child, shall be made available to the receiving county upon placement of the child in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a child is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the child, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the child, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the child in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern to the receiving county.

(g) Whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county.

(h) Where the court has ordered a child placed under the supervision of the social worker and the social worker has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the child may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the social worker to determine the suitability of the family home.

(2) The social worker verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The social worker notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the child. If the license is subsequently denied, the child shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the child will be served by granting visitation rights to the child's grandparents. The court shall clearly specify those rights to the social worker.

(j) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether there are any siblings under the court's jurisdiction, the nature of the relationship between the child and his or her siblings, the appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002, and the impact of the sibling relationships on the child's placement and planning for legal permanence.

SEC. 2.5. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

(b) If the court places the child with that parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a child pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility. Prior to any placement into a juvenile services facility as described in Article 2.6 (commencing with Section 1528) of Chapter 3 of Division 2 of the Health and Safety Code, the court shall make a determination that the child meets the criteria set forth in Section 1528.2 of the Health and Safety Code. Prior to the placement of a child between the ages of 13 and 14 years in a juvenile services facility, the court shall make a determination that a juvenile services facility placement best meets the needs of the child.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the child is taken from the physical custody of the child's parent or guardian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a child to be placed in a county other than the child's parent's or guardian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the child's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the child, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a child is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the child, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information

regarding any known or suspected dangerous behavior of the child, shall be made available to the receiving county upon placement of the child in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a child is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the child, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the child, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the child in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern to the receiving county.

(g) Whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county.

(h) Where the court has ordered a child placed under the supervision of the social worker and the social worker has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the child may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the social worker to determine the suitability of the family home.

(2) The social worker verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The social worker notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the child. If the license is subsequently denied, the child shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the child will be served by granting visitation rights to the child's grandparents. The court shall clearly specify those rights to the social worker.

(j) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether there are any siblings under the court's jurisdiction, the nature of the relationship between the child and his or her siblings, the appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002, and the impact of the sibling relationships on the child's placement and planning for legal permanence.

SEC. 3. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. (a) In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:

(1) (A) Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.

(B) No visitation order shall jeopardize the safety of the child. To protect the safety of the child, the court may keep the child's address confidential. If the parent of the child has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child, the court shall order visitation between the child and the parent only if that order would be consistent with Section 3030 of the Family Code.

(2) Pursuant to subdivision (b) of Section 16002, for visitation between the child and any siblings, unless the court finds by clear and convincing evidence that sibling interaction is detrimental to either child.

(b) When reunification services are not ordered pursuant to Section 361.5, the child's plan for legal permanency shall include consideration of the existence of and the relationship with any sibling pursuant to Section 16002, including their impact on placement and visitation.

(c) As used in this section, ''sibling'' means a child related to another person by blood, adoption, or affinity through a common legal or biological parent.

SEC. 4. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child.

(C) Whether the child has other siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(i) The nature of the relationship between the child and his or her siblings.

(ii) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(iii) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(iv) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(v) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(vi) The continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002.

The factors the court may consider in making a determination regarding the nature of the child's sibling relationships may include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(D) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(2) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(b) Subsequent to the hearing, periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

(c) If the child has been placed out of state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interests of the child.

(d) A child shall not be placed in an out-of-state group home, or remain in an out-of-state group home, unless the group home is in compliance with Section 7911.1 of the Family Code.

SEC. 5. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

(e) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(1) The nature of the relationship between the child and his or her siblings.

(2) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(3) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(4) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(5) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships including, but not limited to,

whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

SEC. 6. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were

provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local

agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the

siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the department when it is acting as an adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 6.1. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed

every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire

about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the department when it is acting as an adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 6.2. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its

dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent

or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

(5) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a

compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 6.3. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights

the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous

order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing, the information and documents to the child, as described in Section 391. The court shall also consider the need

for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are

the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is

acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 7. Section 388 of the Welfare and Institutions Code is amended to read:

388. (a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child himself or herself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order or termination of jurisdiction.

(b) Any person, including a child who is a dependent of the juvenile court, may petition the court to assert a relationship as a sibling related by blood, adoption, or affinity through a common legal or biological parent to a child who is, or is the subject of a petition for adjudication as, a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child. The court may appoint a guardian ad litem to file the petition for the dependent child asserting the sibling relationship if the court determines that the appointment is necessary for the best interests of the

dependent child. The petition shall be verified and shall set forth the following:

(1) Through which parent he or she is related to the dependent child.

(2) Whether he or she is related to the dependent child by blood, adoption, or affinity.

(3) The request or order that the petitioner is seeking.

(4) Why that request or order is in the best interest of the dependent child.

(c) If it appears that the best interests of the child may be promoted by the proposed change of order, recognition of a sibling relationship, or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the persons and by the means prescribed by Section 386, and, in those instances in which the means of giving notice is not prescribed by those sections, then by means the court prescribes.

SEC. 8. Section 16002 of the Welfare and Institutions Code is amended to read:

16002. (a) It is the intent of the Legislature to maintain the continuity of the family unit, and ensure the preservation and strengthening of the child's family ties by ensuring that when siblings have been removed from their home, either as a group on one occurrence or individually on separate occurrences, the siblings will be placed in foster care together, unless it has been determined that placement together is not in the best interest of one or more siblings. The Legislature recognizes that in order to ensure the placement of a sibling group in the same foster care placement, placement resources need to be expanded.

(b) The responsible local agency shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to develop and maintain sibling relationships. If siblings are not placed together in the same home, the social worker shall explain why the siblings are not placed together and what efforts he or she is making to place the siblings together or why those efforts are not appropriate. When placement of siblings together in the same home is not possible, diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child. If the court determines by clear and convincing evidence that sibling interaction is detrimental to a child or children, the reasons for the determination shall be noted in the court order, and interaction shall be suspended.

(c) When there has been a judicial suspension of sibling interaction, the reasons for the suspension shall be reviewed at each periodic review hearing pursuant to Section 366. When the court determines that sibling

interaction can be safely resumed, that determination shall be noted in the court order and the case plan shall be revised to provide for sibling interaction.

(d) If the case plan for the child has provisions for sibling interaction, the child, or his or her parent or legal guardian shall have the right to comment on those provisions. If a person wishes to assert a sibling relationship with a dependent child, he or she may file a petition in the juvenile court having jurisdiction over the dependent child pursuant to subdivision (b) of Section 388.

(e) If parental rights are terminated and the court orders a dependent child to be placed for adoption, the licensed county adoption agency or the State Department of Social Services shall take all of the following steps to facilitate ongoing sibling contact, except in those cases provided in subdivision (b) where the court determines by a preponderance of the evidence that sibling interaction is detrimental to the child:

(1) Include in training provided to prospective adoptive parents information about the importance of sibling relationships to the adopted child and counseling on methods for maintaining sibling relationships.

(2) Provide prospective adoptive parents with information about siblings of the child, except the address where the siblings of the children reside. However, this address may be disclosed by court order for good cause shown.

(3) Encourage prospective adoptive parents to make a plan for facilitating postadoptive contact between the child who is the subject of a petition for adoption and any siblings of this child.

(f) As used in this section, ''sibling'' means a child related to another person by blood, adoption, or affinity through a common legal or biological parent.

(g) The court documentation on sibling placements required under this section shall not require the modification of existing court order forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

SEC. 9. Section 16004 is added to the Welfare and Institutions Code, to read:

16004. (a) The Legislature finds and declares that there is an urgent need to develop placement resources to permit sibling groups to remain together in out-of-home care when removed from the custody of their parents due to child abuse or neglect. Multiple barriers exist, including local ordinances and community care licensing standards, that limit or prevent the county placement agency from fulfilling its obligation pursuant to subdivision (b) of Section 16002 to place siblings together.

Therefore, the Legislature declares its intent to develop specific placement resources to accommodate sibling groups.

(b) The State Department of Social Services shall, in consultation with the County Welfare Directors Association, the Judicial Council, organizations representing foster youth, and other similar, interested organizations, make recommendations to increase the available sibling placement resources. The possible policy changes to be addressed shall include, but shall not be limited to, the following:

(1) The creation of a special licensing category for sibling care, including sibling group foster homes.

(2) Development of children's villages with separate cottages to provide a home for each sibling group.

(3) Funding for targeted recruitment of foster parents for large sibling groups.

(4) Establishment of a higher foster care payment rate for caretakers who accept sibling groups.

(5) Funding for one-time capital improvement costs to remodel homes to accommodate placement of siblings and provide for other up-front costs, such as vans, car seats, and other items.

(6) Establishment of guidelines for placing siblings, who cannot be placed in the same home, within geographic proximity to each other and exploration of the possibility of permitting these siblings to have the option of enrolling in the same school district even when the siblings reside in different school districts.

(c) The department shall develop recommendations for the Legislature, in consultation with the Chief Probation Officers Association and the County Welfare Directors Association, regarding procedures for doing both of the following:

(1) Placing siblings together when one or more siblings are in the juvenile dependency system and one or more siblings are in the juvenile delinquency systems, when such placements are appropriate.

(2) Maintaining contact and sharing information between siblings who are placed separately in out-of-home care under the juvenile dependency and the juvenile delinquency systems.

(d) The department shall submit the recommendations described in subdivisions (b) and (c) to the Legislature by November 1, 2001.

SEC. 10. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the

child while in foster care. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan

shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 10.1. Section 1.5 of this bill incorporates amendments to Section 358.1 of the Welfare and Institutions Code proposed by both this bill and SB 2157. 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 358.1 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2157 in which case Section 1 of this bill shall not become operative.

SEC. 10.2. Section 2.5 of this bill incorporates amendments to Section 361.2 of the Welfare and Institutions Code proposed by this bill and SB 1954. 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 361.2 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1954, in which case Section 361.2 of the Welfare and Institutions Code, as amended by SB 1954, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 10.3. (a) Section 6.1 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 686. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 366.3 of the Welfare and Institutions Code, and (3) AB 2921 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 686, in which case Sections 6, 6.2, and 6.3 of this bill shall not become operative.

(b) Section 6.2 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 2921. 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 366.3 of the Welfare and Institutions Code, (3) AB 686 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2921 in which case Sections 6, 6.1, and 6.3 of this bill shall not become operative.

(c) Section 6.3 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, AB 686, and AB 2921. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) all three bills amend Section 366.3 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 686 and AB 2921, in which case Sections 6, 6.1, and 6.2 of this bill shall not become operative.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 910

An act to amend Sections 8703, 8714, 8714.5, 8714.7, 8715, 9201, 9202, and 9203 of the Family Code, and to amend Sections 362, 366.21, 366.22, 366.26, and 366.3 of, and to repeal Sections 366.24 and 366.25 of, the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 8703 of the Family Code is amended to read:

8703. When the parental rights of a birth parent are terminated pursuant to Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 or Part 4 (commencing with Section 7800) of Division 12, or pursuant to Section 366.25 or 366.26 of the Welfare and Institutions Code, the department or licensed adoption agency responsible for the adoptive placement of the child shall send a written notice to the birth parent, if the birth parent's address is known, that contains the following statement:

(a) ''You are encouraged to keep the department or this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights.

(b) Section 9203 of the Family Code authorizes a person who has been adopted and who attains the age of 21 years to make a request to the State Department of Social Services, or the licensed adoption agency, that joined in the adoption petition, for the name and address of the adoptee's birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be disclosed:

( ) YES

( ) NO

( ) UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE''

SEC. 2. Section 8714 of the Family Code is amended to read:

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been

freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (a).

(d) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(f) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

SEC. 3. Section 8714.5 of the Family Code is amended to read:

8714.5. (a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the county clerk shall immediately notify the State Department of Social Services

in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioner shall notify the court of any petition for adoption. The guardianship proceeding shall be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

(h) For purposes of this section, ''relative'' means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words ''step,'' ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

SEC. 4. Section 8714.7 of the Family Code is amended to read:

8714.7. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.

(b) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interest of the child at the time the adoption petition is granted.

(1) Except as provided in paragraph (2), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(C) Provisions for the sharing of information about the child in the future.

(2) The terms of any postadoption contact agreement entered into pursuant to a petition filed under Section 8714 shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing

jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interest of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court

as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.

SEC. 4.5. Section 8715 of the Family Code is amended to read:

8715. (a) The department or licensed adoption agency, whichever is a party to or joins in the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half-siblings.

(c) Where a petition for adoption has been filed with a postadoption contact agreement pursuant to Section 8714.7, the report shall address whether the postadoption contact agreement has been entered into voluntarily and whether it is in the best interest of the child who is the subject of the petition.

(d) The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

SEC. 5. Section 9201 of the Family Code is amended to read:

9201. (a) Except as otherwise permitted or required by statute, neither the department nor a licensed adoption agency shall release information that would identify persons who receive, or have received, adoption services.

(b) Employees of the department and licensed adoption agencies shall release to the department at Sacramento any requested information, including identifying information, for the purposes of recordkeeping and monitoring, evaluation, and regulation of the provision of adoption services.

(c) Prior to the placement of a child for adoption, the department or licensed adoption agency may, upon the written request of both a birth and a prospective adoptive parent, arrange for contact between these

birth and prospective adoptive parents that may include the sharing of identifying information regarding these parents.

(d) The department and any licensed adoption agency may, upon written authorization for the release of specified information by the subject of that information, share information regarding a prospective adoptive parent or birth parent with other social service agencies, including the department and other licensed adoption agencies, or providers of health care as defined in Section 56.05 of the Civil Code.

(e) Notwithstanding any other law, the department and any licensed adoption agency may furnish information relating to an adoption petition or to a child in the custody of the department or any licensed adoption agency to the juvenile court, county welfare department, public welfare agency, private welfare agency licensed by the department, provider of foster care services, potential adoptive parent, or provider of health care as defined in Section 56.05 of the Civil Code, if it is believed the child's welfare will be promoted thereby.

(f) The department and any licensed adoption agency may make adoptions case records, including identifying information, available for research purposes, provided that the research will not result in the disclosure of the identity of the child or the parties to the adoption to anyone other than the entity conducting the research.

SEC. 6. Section 9202 of the Family Code is amended to read:

9202. (a) Notwithstanding any other law, the department or licensed adoption agency that made a medical report required by Section 8706, 8817, or 8909 shall provide a copy of the medical report, in the manner the department prescribes by regulation, to any of the following persons upon the person's request:

(1) A person who has been adopted pursuant to this part and who has attained the age of 18 years or who presents a certified copy of the person's marriage certificate.

(2) The adoptive parent of a person under the age of 18 years who has been adopted pursuant to this part.

(b) A person who is denied access to a medical report pursuant to regulations adopted pursuant to this section may petition the court for review of the reasonableness of the department's or licensed adoption agency's decision.

(c) The names and addresses of any persons contained in the report shall be removed unless the person requesting the report has previously received the information.

SEC. 7. Section 9203 of the Family Code is amended to read:

9203. (a) The department or a licensed adoption agency shall do the following:

(1) Upon the request of a person who has been adopted pursuant to this part and who has attained the age of 21 years, disclose the identity

of the person's birth parent or parents and their most current address shown in the records of the department or licensed adoption agency, if the birth parent or parents have indicated consent to the disclosure in writing.

(2) Upon the request of the birth parent of a person who has been adopted pursuant to this part and who has attained the age of 21 years, disclose the adopted name of the adoptee and the adoptee's most current address shown in the records of the department or licensed adoption agency, if the adult adoptee has indicated in writing, pursuant to the registration program developed by the department, that the adult adoptee wishes the adult adoptee's name and address to be disclosed.

(3) Upon the request of the adoptive parent of a person under the age of 21 years who has been adopted pursuant to this part, disclose the identity of a birth parent and the birth parent's most current address shown in the records of the department or licensed adoption agency if the department or licensed adoption agency finds that a medical necessity or other extraordinary circumstances justify the disclosure.

(b) The department shall prescribe the form of the request required by this section. The form shall provide for an affidavit to be executed by the requester that to the best of the requester's knowledge the requester is an adoptee, the adoptee's birth parent, or the adoptee's adoptive parent. The department may adopt regulations requiring any additional means of identification from a requester that it deems necessary. The request shall advise an adoptee that if the adoptee consents, the adoptee's adoptive parents will be notified of the filing of the request before the release of the name and address of the adoptee's birth parent.

(c) Subdivision (a) is not applicable if a birth parent or an adoptee has indicated that he or she does not wish his or her name or address to be disclosed.

(d) Within 20 working days of receipt of a request for information pursuant to this section, the department shall either respond to the request or forward the request to a licensed adoption agency that was a party to the adoption.

(e) Notwithstanding any other law, the department shall announce the availability of the present method of arranging contact among an adult adoptee, the adult adoptee's birth parents, and adoptive parents authorized by Section 9204 utilizing a means of communication appropriate to inform the public effectively.

(f) The department or licensed adoption agency may charge a reasonable fee in an amount the department establishes by regulation to cover the costs of processing requests for information made pursuant to subdivision (a). The department or licensed adoption agency shall waive fees authorized by this section for any person who is receiving public assistance pursuant to Part 3 (commencing with Section 11000) of

Division 9 of the Welfare and Institutions Code. The revenue resulting from the fees so charged shall be utilized by the department or licensed adoption agency to increase existing staff as needed to process these requests. Fees received by the department shall be deposited in the Adoption Information Fund. This revenue shall be in addition to any other funds appropriated in support of the state adoption program.

(g) This section applies only to adoptions in which the relinquishment for or consent to adoption was signed or the birth parent's rights were involuntarily terminated by court action on or after January 1, 1984.

SEC. 8. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to

participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) Notwithstanding subdivision (c), no prospective adoptive parent or birth relative, including a birth parent, shall be required by court order to enter into a postadoption contact agreement or into mediation or any other negotiation intended to develop a postadoption contact agreement.

SEC. 8.5. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies or private service providers, or both, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency or private service provider that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency or private service provider is joined, the court shall not impose duties upon the agency or private service provider beyond those mandated by law. Nothing in this section shall prohibit agencies or private service providers that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency or private service provider has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be

required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) Notwithstanding subdivision (c), no prospective adoptive parent or birth relative, including a birth parent, shall be required by court order to enter into a postadoption contact agreement or into mediation or any other negotiation intended to develop a postadoption contact agreement.

(e) ''Private service provider'' means any agency or individual that receives federal, state, or local government funding or reimbursement for providing services directly to foster children.

SEC. 9. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or legal guardian, to the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or legal guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its

recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5 and the court finds by clear and convincing evidence that the parent failed to participate regularly and

make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of

Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services have been provided or offered to the parent or legal guardian that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or legal guardian that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the

permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a

licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians 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 legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 10. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima

facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, ''extended family'' for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal 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 legal guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or legal guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, ''relative'' means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or

the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 11. Section 366.24 of the Welfare and Institutions Code is repealed.

SEC. 12. Section 366.25 of the Welfare and Institutions Code is repealed.

SEC. 13. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), or (D), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the

visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive

parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, ''preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 14. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court

following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be

considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

(5) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine

whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 14.1. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the

petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

(5) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live

with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 15. Section 8.5 of this bill incorporates amendments to Section 362 of the Welfare and Institutions Code proposed by both this bill and SB 1611. 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 362 of the Welfare and Institutions Code, (3) this bill is enacted after SB 1611, in which case Section 8 of this bill shall not become operative.

SEC. 16. Section 14.5 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 1987. 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 366.3 of the Welfare and Institutions Code, (3) this bill is enacted after AB 1987, in which case Section 14 of this bill shall not become operative.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 911

An act to amend Sections 362, 366.3, and 727 of, and to add Section 391 to, the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) When a child is adjudged a dependent child of the court, the juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter, to ensure the child's regular school attendance and to make reasonable efforts to obtain educational services necessary to meet the specific needs of the child.

SEC. 1.5. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies or private service providers, or both, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency or private service provider that the court determines has failed to

meet a legal obligation to provide services to the child. In any proceeding in which an agency or private service provider is joined, the court shall not impose duties upon the agency or private service provider beyond those mandated by law. Nothing in this section shall prohibit agencies or private service providers that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency or private service provider has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

(d) When a child is adjudged a dependent child of the court, the juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter, to ensure the child's regular school attendance and to make reasonable efforts to obtain educational services necessary to meet the specific needs of the child.

(e) ''Private service provider'' means any agency or individual that receives federal, state, or local government funding or reimbursement for providing services directly to foster children.

SEC. 2. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of

social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by

a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the department when it is acting as an adoption agency, has determined it is unlikely that the child will be

adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 2.1. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court

may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that

are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county

welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the department when it is acting as an adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 2.2. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the

termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of

a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 2.3. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however,

a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is

in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent

plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care.

The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 3. Section 391 is added to the Welfare and Institutions Code, to read:

391. At any hearing to terminate jurisdiction over a dependent child who has reached the age of majority the county welfare department shall do both of the following:

(a) Ensure that the child is present in court, unless the child does not wish to appear in court, or document efforts by the county welfare department to locate the child when the child is not available.

(b) Submit a report verifying that the following information, documents, and services have been provided to the child:

(1) Written information concerning the child's dependency case, including his or her family history and placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated.

(2) The following documents, where applicable: social security card, certified birth certificate, identification card, as described in Section

13000 of the Vehicle Code, death certificate of parent or parents, and proof of citizenship or residence.

(3) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support.

(4) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate.

(c) The court may continue jurisdiction if it finds that the county welfare department has not met the requirements of subdivision (b) and that termination of jurisdiction would be harmful to the best interests of the child. If the court determines that continued jurisdiction is warranted pursuant to this section, the continuation shall only be ordered for that period of time necessary for the county welfare department to meet the requirements of subdivision (b). This section shall not be construed to limit the discretion of the juvenile court to continue jurisdiction for other reasons. The court may terminate jurisdiction if the county welfare department has offered the required services, and the child either has refused the services or, after reasonable efforts by the county welfare department, cannot be located.

(d) The Judicial Council shall develop and implement standards, and develop and adopt appropriate forms, necessary to implement this section.

SEC. 4. Section 727 of the Welfare and Institutions Code is amended to read:

727. (a) When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or 602 the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of the Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has

been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor who has been adjudged a ward of the court on the basis of the commission of any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of Section 12220 of the Penal Code, shall be eligible for probation without supervision of the probation officer only when the court determines that the interests of justice would best be served and states reasons on the record for that determination.

In all other cases, the court shall order the care, custody, and control of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative. When a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor's medical, surgical, and dental care and education as if the relative caretaker were the custodial parent of the minor.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(b) Where the court has ordered a specific minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, provided that all the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out subdivisions (a) and (b), including orders to appear before a county financial evaluation officer and orders directing the parents or guardians to ensure the minor's regular school attendance and to make reasonable efforts to obtain appropriate educational services necessary to meet the needs of the minor.

When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

SEC. 5. (a) Section 1.5 of this bill incorporates amendments to Section 362 of the Welfare and Institutions Code proposed by both this bill and SB 1611. 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 362 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1611, in which case Section 1 of this bill shall not become operative.

(b) Section 2.1 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 1987. 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 366.3 of the Welfare and Institutions Code, and (3) AB 2921 is not enacted or as enacted does not amend that section, and (4) this bill

is enacted after AB 1987, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(c) Section 2.2 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 2921. 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 366.3 of the Welfare and Institutions Code, (3) AB 1987 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2921 in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(d) Section 2.3 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, AB 1987, and AB 2921. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) all three bills amend Section 366.3 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1987 and AB 2921, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

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 912

An act to amend Sections 25263, 25264, 25265, 25268, 25318.5, 25323.3, 25324, 25355.2, 25358.4, 25358.5, 25358.7, 25390.3, and 25390.9 of, to add Sections 25310.5, 25319.1, and 25326.3 to, to repeal and add Sections 25319.5 and 25356 of, and to repeal and add Article 8.5 (commencing with Section 25395.20) of Chapter 6.8 of Division 20 of, the Health and Safety Code, relating to hazardous substances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 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) (1) There are thousands of brownfields and underutilized properties in California where redevelopment has been stymied due to real or perceived hazardous materials contamination.

(2) Because of the reluctance of private developers, local governments, and schools to redevelop these urban properties, the location of new development tends to be at the edges of urban areas, because those areas are generally perceived to entail lesser potential for contamination and liability for cleanup costs.

(3) This has resulted in a multitude of problems, including urban sprawl, decaying inner-city neighborhoods and schools, public health and environmental risks stemming from contaminated properties, reduced inner-city tax bases, and an increased need for major infrastructure improvements, such as streets, highways, and sewer systems to service the urban fringe areas while the inner-city infrastructure deteriorates.

(4) One of the primary reasons that these urban properties are not redeveloped for beneficial use is that potential redevelopers are hesitant to expend funds to determine whether a property is contaminated, and if so, how much it would cost to remediate the site. Some potential redevelopers are also not able to secure conventional financing to remediate contaminated properties.

(b) The Legislature hereby recognizes that it is in the best interests of the people of California that state funds be made available to stimulate the redevelopment of brownfields and underutilized properties, if this redevelopment will result in the overall improvement of the community where the property is located and there is a reasonable economic or social return on these investments, by providing low-interest loans to qualified applicants for the purpose of funding site investigations, and other response actions at brownfields and underutilized properties.

SEC. 2. Section 25263 of the Health and Safety Code is amended to read:

25263. (a) Any agency, including the administering agency, may request the committee at any time to convene an advisory team for the purpose of providing the administering agency with guidance in overseeing the site investigation and remedial action at a hazardous materials release site. If the request is made by an agency other than the administering agency, the request shall be in writing, and shall specify any issue that is of concern to the requesting agency, the requirements of the laws, ordinances, regulations, or standards that are related to the issue, and the manner in which the administration or implementation of those requirements by the administering agency has raised the issue concerning the site investigation or remedial action at the hazardous materials release site. The committee shall create such an advisory team within 30 calendar days of the date of receipt of the request and shall

designate the members of the advisory team after consulting with interested agencies. The advisory team shall be chaired by the representative of the agency that requested the advisory team to be convened and shall meet within five working days of the date that any agency requests a meeting. A representative of the administering agency shall attend all advisory team meetings.

(b) The advisory team may only take action to ensure that the administering agency has adequate information concerning the requirements of applicable laws, ordinances, regulations, or standards to address, in an appropriate and correct manner, any issue that led to the request for, and the convening of, the advisory team. To carry out this function, the advisory team shall do all of the following:

(1) Define, in a specific manner, any issue related to the site investigation and remedial action that led to the request to convene the advisory team.

(2) Determine the application of the laws, ordinances, regulations, and standards related to that issue that are applicable to, and govern, the site investigation and remedial action.

(3) Make recommendations to the administering agency concerning the manner in which the applicable laws, ordinances, regulations, and standards should be administratively applied to appropriately and correctly resolve the issue.

(c) An agency, other than the administering agency, that is a member of the advisory team shall be eligible for reimbursement of oversight costs related to its participation on the advisory team from the responsible party for the hazardous materials release site only if all of the following apply:

(1) The issue that led to the request to convene the advisory team, or the issue that is considered by the advisory committee following its formation, is directly and materially related to the administration of a law, ordinance, regulation, or standard for which the agency has actual statutory or administrative responsibility.

(2) The administering agency certifies that the agency is not able to address the issue without a significant expenditure of personnel time or other resources, or certifies that the issue is related to potential risks to human health or safety or the environment of sufficient significance to warrant reimbursement of the agency's oversight expenditures.

(3) Either of the following applies:

(A) The responsible party agrees to reimburse the agency's oversight expenditures.

(B) The committee directs the responsible party or responsible parties to reimburse the agency's oversight expenditures.

(d) Subdivision (c) does not affect the authority of the administering agency to recover oversight costs in accordance with applicable law.

SEC. 3. Section 25264 of the Health and Safety Code is amended to read:

25264. (a) The administering agency for a hazardous materials release site shall supervise all aspects of a site investigation and remedial action conducted by the responsible party and, for that purpose, the administering agency shall, notwithstanding any other provision of law, including, but not limited to, this division and Division 7 (commencing with Section 13000) of the Water Code, have sole jurisdiction over all activities that may be required to carry out a site investigation and remedial action necessary to respond to the hazardous materials release at the site. For purposes of this chapter, the administering agency shall do all of the following:

(1) Administer all state and local laws, ordinances, regulations, and standards that are applicable to, and govern, the activities involved with the site investigation and remedial action at the site.

(2) Determine the adequacy of site investigation and remedial action activities at the site and the extent to which the activities comply, or fail to comply, with applicable state and local laws, ordinances, regulations, and standards. In making these determinations, the administering agency shall consult with the advisory team if one has been convened pursuant to Section 25263.

(3) Issue permits or other forms of authorization that may be required by state and local laws, ordinances, and regulations and that are necessary to undertake activities related to the site investigation and remedial action at the site. Before issuing a permit or other authorization pursuant to this paragraph, the administering agency shall consult with the appropriate agency and ensure that required procedures are followed and adequate permit requirements and conditions are imposed.

(b) Upon determining that a site investigation and remedial action at a hazardous materials release site has been satisfactorily completed and that a permanent remedy to the release has been accomplished, the administering agency shall issue the responsible party a certificate of completion. The certificate shall describe the release of hazardous materials that was the subject of the remedial action and the remedial action that was taken and shall certify that applicable remedial action standards and objectives were achieved.

(c) Except as otherwise provided in Section 25265 and this subdivision, the issuance of a certificate of completion by the administering agency shall constitute a determination that the responsible party has complied with the requirements of all state and local laws, ordinances, regulations, and standards that are applicable to the site investigation and remedial action for which the certificate is issued. No agency that has jurisdiction over hazardous materials releases pursuant to those state and local laws, ordinances, or regulations may

take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued. The administering agency may not take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued unless one of the following applies:

(1) Monitoring, testing, or analysis of the hazardous materials release site subsequent to the issuance of the certificate of completion indicates that the remedial action standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remedial action or certificate of completion are violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action or certificate of completion for the site are not adequately funded or are not properly carried out.

(4) A hazardous materials release is discovered at the site that was not the subject of the site investigation and remedial action for which the certificate of completion was issued.

(5) A material change in the facts known to the administering agency at the time the certificate of completion was issued, or new facts, causes the administering agency to find that further site investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.

(6) The responsible party induced the administering agency to issue the certificate of completion by fraud, negligent or intentional nondisclosure of information, or misrepresentation.

(d) (1) Except as provided in Section 25265, the administering agency shall be the sole agency responsible for determining if any of the conditions described in paragraphs (1) through (6), inclusive, of subdivision (c) are applicable to a hazardous materials release site for which a certificate of completion has been issued pursuant to subdivision (b), and for taking any action that is deemed necessary if that determination is made. Any agency, other than the administering agency, that has information that any of those conditions applies to the hazardous materials site shall provide the administering agency with that information and the administering agency shall, within 45 calendar days of receipt of the request, do all of the following:

(A) Determine whether the condition is applicable.

(B) If it is applicable, determine if further action at the site is warranted.

(C) If further action is warranted, take further action at the site as may be necessary.

(2) If the administering agency fails, or refuses, to act properly or in a timely manner, as required by this subdivision, the agency that provided the information to the administering agency may petition the committee for review in accordance with Section 25265. The decision of the committee shall be final, and shall not be subject to judicial review.

SEC. 4. Section 25265 of the Health and Safety Code is amended to read:

25265. (a) Any agency may petition the chairperson of the committee at any time to review any of the following:

(1) The manner in which the administering agency is implementing state and local laws, ordinances, regulations, and standards applicable to the site investigation and remedial action that is being carried out by the responsible party at a hazardous materials release site.

(2) The decision to issue a certificate of completion for the site.

(3) The failure, or refusal, of the administering agency to act properly or in a timely manner pursuant to subdivision (d) of Section 25264.

(b) The petition specified in subdivision (a) shall state the reasons why the review is warranted, the basis for believing that applicable state and local laws, ordinances, regulations, and standards are not being implemented properly, or the grounds for objecting to the issuance of a certificate of completion.

(c) (1) The committee shall review the petition submitted pursuant to subdivision (a), consult with the petitioning and administering agencies, and make a decision regarding the validity of the petition within 30 calendar days of the date the petition is received.

(2) If the committee finds that the petition is not valid, it shall deny the petition. If it finds that the administering agency is not properly implementing a state or local law, ordinance, regulation, or standard, the administering agency shall be divested of exclusive jurisdiction over the implementation of that law, ordinance, regulation, or standard and the jurisdiction shall revert to the appropriate agency.

(3) If the committee finds that there are valid grounds for objecting to the issuance of a certificate of completion, the committee shall specify the actions that the responsible party and the administering agency shall be required to take before the certificate may be issued.

(4) If the committee determines that the administering agency has not acted properly or in a timely manner pursuant to subdivision (d) of Section 25264, the committee shall determine whether one or more of the conditions described in paragraphs (1) through (6), inclusive, of subdivision (c) of Section 25264 applies to the hazardous materials release site for which a certificate of completion has been issued pursuant to subdivision (b) of Section 25264. If the committee makes a determination pursuant to this paragraph, the committee shall require the administering agency to take any further action at the site that is

necessary to address the condition or designate another administering agency to take the necessary action.

(d) Nothing in this section shall be construed to affect or limit the jurisdiction of the administering agency in connection with the administration of any state or local law, ordinance, regulation, or standard that has not been challenged under this section.

SEC. 5. Section 25268 of the Health and Safety Code is amended to read:

25268. Nothing in this chapter shall be construed as infringing on the right of any agency to obtain from the administering agency for a site the information that may be necessary for the agency to carry out its responsibilities under this chapter, including, but not limited to, its responsibilities under Section 25263, subdivisions (a), (c) and (d) of Section 25264, and Section 25265.

SEC. 6. Section 25310.5 is added to the Health and Safety Code, to read:

25310.5. ''Agency'' means the California Environmental Protection Agency.

SEC. 7. Section 25318.5 of the Health and Safety Code is amended to read:

25318.5. ''Operation and maintenance'' means those activities initiated or continued at a hazardous substance release site following completion of a response action that are deemed necessary by the department or regional board in order to protect public health or safety or the environment, to maintain the effectiveness of the response action at the site, or to achieve or maintain the response action standards and objectives established by the final remedial action plan or final removal action work plan applicable to the site.

SEC. 8. Section 25319.1 is added to the Health and Safety Code, to read:

25319.1. ''Phase I environmental assessment'' means a preliminary assessment of a property to determine whether there has been, or may have been, a release of a hazardous substance based on reasonably available information about the property and general vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a hazardous material, data base searches, reviews of relevant files of federal, state, and local agencies, visual and other surveys of the property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a phase I environmental assessment.

SEC. 9. Section 25319.5 of the Health and Safety Code is repealed.

SEC. 10. Section 25319.5 is added to the Health and Safety Code, to read:

25319.5. ''Preliminary endangerment assessment'' means an activity that is performed to determine whether current or past hazardous substance management practices have resulted in a release or threatened release of a hazardous substance that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the department entitled ''Preliminary Endangerment Assessment: Guidance Manual,'' or as those guidelines may be amended by the department. A preliminary endangerment assessment includes all of the following activities:

(a) Sampling and analysis of a site.

(b) A preliminary determination of the type and extent of hazardous material contamination of a site.

(c) A preliminary evaluation of the risks the hazardous materials contamination of a site may pose to public health or the environment.

SEC. 11. Section 25323.3 of the Health and Safety Code is amended to read:

25323.3. ''Response,'' ''respond,'' or ''response action'' have the same meanings as defined in Section 9601(25) of the federal act (42 U.S.C. Sec. 9601(25)). The enforcement and oversight activities of the department and regional board are included within the meaning of ''response,'' ''respond,'' or ''response action.''

SEC. 12. Section 25324 of the Health and Safety Code is amended to read:

25324. (a) ''State account'' means the Toxic Substances Control Account established pursuant to Section 25173.6, except as follows:

(1) For purposes of Section 25334 and Article 7.5 (commencing with Section 25385), ''state account'' means the Hazardous Substance Account established pursuant to Section 25330.

(2) For purposes of Section 25330.2, ''state account'' means the Site Remediation Account established pursuant to Section 25337.

(b) Notwithstanding any other provision of this section, any costs incurred and payable from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site Remediation Account prior to July 1, 1998, to implement this chapter, as it read prior to January 1, 1999, or Chapter 6.85 (commencing with Section 25396), shall be recoverable from the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable from the state account.

SEC. 13. Section 25326.3 is added to the Health and Safety Code, to read:

25326.3. ''Secretary'' means the Secretary for Environmental Protection.

SEC. 14. Section 25355.2 of the Health and Safety Code is amended to read:

25355.2. (a) Except as provided in subdivision (c), the department or the regional board shall require any responsible party who is required to comply with operation and maintenance requirements as part of a response action, to demonstrate and to maintain financial assurance in accordance with this section. The responsible party shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities.

(b) (1) For purposes of subdivision (a), the responsible party shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) As an alternative to the requirement of paragraph (1), a responsible party may demonstrate and maintain financial assurance by means of a financial assurance mechanism other than those listed in paragraph (1), if the alternative financial assurance mechanism has been submitted to, and approved by, the department or the regional board as being at least equivalent to the financial assurance mechanisms specified in paragraph (1). The department or the regional board shall evaluate the equivalency of the proposed alternative financial assurance mechanism principally in terms of the certainty of the availability of funds for required operation and maintenance activities and the amount of funds that will be made available. The department or the regional board shall require the responsible party to submit any information necessary to make a determination as to the equivalency of the proposed alternative financial assurance mechanism.

(c) The department or the regional board shall waive the financial assurance required by subdivision (a) if the department or the regional board makes one of the following determinations:

(1) The responsible party is a small business and has demonstrated all of the following:

(A) The responsible party cannot qualify for any of the financial assurance mechanisms set forth in subdivisions (b), (c), and (d) of Section 66265.143 of Title 22 of the California Code of Regulations.

(B) The responsible party financially cannot meet the requirements of subdivision (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

(C) The responsible party is not capable of meeting the eligibility requirements set forth in subdivision (e) of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) The responsible party is a small business and has demonstrated that the responsible party financially is not capable of establishing one

of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations while at the same time financing the operation and maintenance requirements applicable to the site.

(3) The responsible party is not separately required to demonstrate and maintain a financial assurance mechanism for operation and maintenance activities at a site because of all of the following conditions:

(A) The site is a multiple responsible party site.

(B) Financial assurance that operation and maintenance activities at the site will be carried out is demonstrated and maintained by a financial assurance mechanism established jointly by all, or some, of the responsible parties.

(C) The financial assurance mechanism specified in subparagraph (B) meets the requirements of subdivisions (a) and (b).

(4) The responsible party is a federal, state, or local government entity.

(d) The department or the regional board shall withdraw a waiver granted pursuant to paragraph (1) or (2) of subdivision (c) if the department or the regional board determines that the responsible party that obtained the waiver no longer meets the eligibility requirements for the waiver.

(e) Notwithstanding Section 7550.5 of the Government Code, on or before January 15, 2001, the department shall report to the Legislature all of the following:

(1) The number of requests the department and the regional boards have received for waivers from the financial assurance requirements of this section during the period between May 26, 1999, and January 1, 2001.

(2) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.

(3) The total number of businesses or other entities that were required by this section to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this chapter and Chapter 6.5 (commencing with Section 25100) by responsible parties that requested waivers.

(4) Financial assurance mechanisms other than the financial assurance mechanisms referenced in paragraph (1) of subdivision (b) that may be available to responsible parties.

(f) For purposes of this section, ''small business'' is a business that meets the requirements set forth in subdivision (d) of Section 14837 of the Government Code.

SEC. 15. Section 25356 of the Health and Safety Code is repealed.

SEC. 16. Section 25356 is added to the Health and Safety Code, to read:

25356. (a) (1) The department shall adopt, by regulation, criteria for the selection of hazardous substance release sites for a response action under this chapter. The criteria shall take into account pertinent factors relating to public health, safety and the environment, which shall include, but are not necessarily limited to, potential hazards to public health, safety or the environment, the risk of fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)).

(2) The criteria adopted pursuant to paragraph (1) may include a minimum hazard threshold, below which sites shall not be listed pursuant to this section, if the sites are subject to the authority of the department to order a response action, or similar action, pursuant to Chapter 6.5 (commencing with Section 25100).

(b) (1) The department shall publish and revise, at least annually, a listing of the hazardous substance release sites selected for, and subject to, a response action under this chapter. The department shall list the sites based upon the criteria adopted pursuant to subdivision (a) and the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at the site or in a significant increase in risk to human health or safety or the environment.

(2) The list of sites established pursuant to this subdivision shall be published by the department and made available to the public or any interested person upon request and without cost. The department shall list sites alphabetically within each priority tier, as specified in subdivision (c), and shall update the list of sites at least annually to reflect new information regarding previously listed sites or the addition of new sites requiring response actions.

(c) The department shall assign each site listed pursuant to subdivision (b) to one of the following priority tiers for the purpose of informing the public of the relative hazard of listed sites:

(1) ''Priority tier one'' shall include any site that the department determines, using the criteria described in subdivision (b), meets any of the following conditions:

(A) The site may pose a known or probable threat to public health or safety through direct human contact.

(B) The site may pose a substantial probability of explosion or a fire or a significant risk due to hazardous air emissions.

(C) The site has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water.

(D) There is a risk that the costs of a response action will increase rapidly or risks to human health or safety or the environment will increase significantly if response action is deferred.

(2) ''Priority tier two'' shall include any site that poses a substantial but less immediate threat to public health or safety or the environment and any site that will require a response action, but presents only a limited and defined threat to human health or safety or the environment. Priority tier two may contain sites previously listed in priority tier one if the department determines that direct threats to human health or safety have been removed and if physical deterioration of the site has been stabilized so that threats to the environment are not significantly increasing.

(d) Hazardous substance release sites listed by the department pursuant to subdivision (b) are subject to this chapter and all actions carried out in response to hazardous substance releases or threatened releases at listed sites shall comply with the procedures, standards, and other requirements set forth in this chapter or established pursuant to the requirements of this chapter.

(e) (1) The adoption of the minimum hazard threshold pursuant to paragraph (2) of subdivision (a), the department's development and publication of the list of sites pursuant to subdivision (b), and the assignment of sites to a tier pursuant to subdivision (c), including the classification of a site as within a minimum threshold pursuant to subdivision (c), are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The adoption of the criteria used by the department pursuant to subdivision (b) to determine the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at a site or in a significant increase in risk to human health or safety or the environment is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) (1) Except as provided in paragraph (2), the department shall expend all funds appropriated to the department for any response action pursuant to this chapter, and shall take all response action pursuant to this chapter, in conformance with the assignment of sites to priority tiers pursuant to subdivision (c).

(2) The department may expend funds appropriated for a response action and take a response action, without conforming to the listing of sites by tier pursuant to subdivision (c), or at a site that has not been listed pursuant to subdivision (b), if any of the following apply:

(A) The department is monitoring a response action conducted by a responsible party at a site listed pursuant to subdivision (b) or at a site that is not listed but is being voluntarily remediated by a responsible party or another person.

(B) The expenditure of funds is necessary to pay for the state share of a response action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(C) The department is assessing, evaluating, and characterizing the nature and extent of a hazardous substance release at a site for which the department has not been able to identify a responsible party, the responsible party is defunct or insolvent, or the responsible party is not in compliance with an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5.

(D) The department is carrying out activities pursuant to paragraph (2) or (3) of subdivision (b) of, or subdivision (c) or (d) of, Section 25355.5.

(3) The department may, at any one time, expend funds and take a response action at more than one site on the list established pursuant to subdivision (b). In addition, the department may, at any one time, oversee the performance of any activities conducted by a responsible party on more than one site on the list established pursuant to subdivision (b).

(g) This section does not require the department to characterize every site listed pursuant to subdivision (b) before the department begins response actions at those sites.

(h) The department, or, if appropriate, the California regional water quality board, is the state agency with sole responsibility for ensuring that required action in response to a hazardous substance release or threatened release at a listed site is carried out in compliance with the procedures, standards, and other requirements set forth in this chapter, and shall, as appropriate, coordinate the involvement of interested or affected agencies in the response action.

SEC. 17. Section 25358.4 of the Health and Safety Code is amended to read:

25358.4. The analysis of any material that is required to demonstrate compliance with this chapter shall be performed by a laboratory accredited by the State Department of Health Services pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

SEC. 18. Section 25358.5 of the Health and Safety Code is amended to read:

25358.5. Any removal or remedial action taken or contracted by the department pursuant to Section 25354 or subdivision (a) of Section 25358.3 shall be exempt from all of the following provisions:

(a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Section 10295 of, and Article 4 (commencing with Section 10335) of, and Article 5 (commencing with Section 10355) of, Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 19. Section 25358.7 of the Health and Safety Code is amended to read:

25358.7. (a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Section 25356.

(b) The department, or the regional board, as appropriate, shall inform the public, and in particular, persons living in close proximity to a hazardous substance release site listed pursuant to Section 25356, of the existence of the site and the department's or regional board's intention to conduct a response action at the site, and shall conduct a baseline community survey to determine the level of public interest and desire for involvement in the department's or regional board's activities, and to solicit concerns and information regarding the site from the affected community. Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(c) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Section 25356 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:

(1) Provide access to information which the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in subdivision (a) of Section 25358.2.

(B) Business financial data and information, as specified in subdivision (c) of Section 25358.6.

(C) Information which the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned

activities. The factsheets shall be made available in languages other than English if appropriate.

(3) Provide notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(d) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this chapter and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(e) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this chapter, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(f) This section does not apply to emergency actions taken pursuant to Section 25354.

SEC. 20. Section 25390.3 of the Health and Safety Code is amended to read:

25390.3. (a) The Orphan Share Reimbursement Trust Fund is hereby created in the State Treasury.

(b) The administrator of the fund may expend the money deposited in the fund as provided in this article, upon appropriation by the Legislature. The administrator of the fund shall act in a fiduciary capacity, shall prudently administer the fund, and shall protect the fund from any unreasonable or unjustified claims, including any unreasonable or unjustified determinations of the orphan share percentage.

(c) Except as provided in subdivision (d) and subdivision (b) of Section 25358.7.2, the administrator of the fund may expend the money in the fund for all of the following purposes:

(1) To pay claims for reimbursement of all, or any part of, the orphan share at a site paid by the responsible party filed pursuant to Section 25390.4.

(2) For the costs of implementing this article.

(3) To pay the reasonable costs of the department and the regional board for performance of its duties under this article, including, but not limited to, its participation in the orphan share determination process set forth in Section 25390.5, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4. The expenditures from the fund for purposes of this paragraph shall not exceed 5 percent of the total amount appropriated from the fund in the annual Budget Act for purposes of this subdivision for that fiscal year.

(4) To pay the portion of costs attributable to the orphan share incurred by the department and the regional boards to oversee actions of potentially responsible parties, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4.

(d) If an appropriation from the General Fund is made to the fund in any fiscal year and an amount greater than five million dollars ($5,000,000) in unexpended funds, beyond any amount approved by the administrator of the fund to pay claims pursuant to this article from that General Fund appropriation, remain in the fund at the end of that fiscal year, and if the department determines that additional funding for orphan sites beyond that appropriated from the Toxic Substances Control Account is required for the next fiscal year, the administrator may expend the amount in excess of five million dollars ($5,000,000) from the General Fund appropriation to pay for response costs incurred by the department or the regional boards under this chapter at sites listed pursuant to Section 25356 where no viable responsible parties exist.

SEC. 21. Section 25390.9 of the Health and Safety Code is amended to read:

25390.9. (a) This article shall become operative on the operative date of the statute that does either, or both, of the following:

(1) Appropriates funds to the fund to implement this article.

(2) Establishes a revenue source for the fund.

(b) Notwithstanding subdivision (a), the operation of this article shall be suspended during any fiscal year in which both no funds are appropriated to the fund to implement this article and no revenue source for the fund is operative.

SEC. 22. Article 8.5 (commencing with Section 25395.20) of Chapter 6.8 of Division 20 of the Health and Safety Code, as added by Chapter 144 of the Statutes of 2000, is repealed.

SEC. 23. Article 8.5 (commencing with Section 25395.20) is added to Chapter 6.8 of Division 20 of the Health and Safety Code, to read:

Article 8.5. Cleanup Loans and Environmental Assistance to Neighborhoods

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) ''Account'' means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) ''Brownfield'' means property that meets all of the following conditions:

(i) It is located in an urbanized area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) ''Brownfield'' does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(3) ''Cleanup Loans and Environmental Assistance to Neighborhoods Program'' or ''CLEAN'' means the loan program established by the department pursuant to Section 25395.22, to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(4) ''Economic activity'' means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(5) ''Eligible property'' means a site that is either of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (11).

(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4

(commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined by the Trade and Commerce Agency pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing that is affordable to very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) ''Eligible property'' does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(6) (A) ''Hazardous material'' means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. ''Hazardous material'' includes, but is not limited to, all of the following:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(B) ''Hazardous material'' does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(7) ''Investigating site contamination program'' means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of an underutilized urban property.

(8) ''No longer in operation'' means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(9) ''Project'' means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(10) ''Property'' means real property, as defined in Section 658 of the Civil Code.

(11) ''Underutilized property'' means property that meets all of the following conditions:

(A) It is located in an urbanized area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(12) ''Urbanized area'' has the same meaning as set forth in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at

brownfields and underutilized properties located in the state pursuant to this article. All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22.

(2) The money in the account may be expended by the department and the agency for the administration of this article only upon appropriation by the Legislature in the annual Budget Act or in another measure.

25395.21. (a) The department, with the approval of the secretary, shall establish an Investigating Site Contamination Program to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. A loan provided pursuant to this section shall not be used for the cost of a phase I environmental assessment or the department's oversight of the preparation and approval of the preliminary endangerment assessment.

(b) The department shall develop a loan application form for an investigating site contamination program loan and shall include, in the form, any provisions that the department considers to be appropriate. The application form shall be signed by the loan applicant and shall be submitted to the department with all of the following documentation:

(1) The phase I environmental assessment for the property that is the subject of the loan application.

(2) Information that demonstrates that the property is a brownfield or an underutilized property.

(3) If the owner of the property that is the subject of the loan application is not the loan applicant, documentation that demonstrates that the owner consents to the performance of the preliminary endangerment assessment of the property.

(4) If the owner of the property that is the subject of the loan application is not the loan applicant, a copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(5) Any other information the department deems necessary.

(c) The department shall determine whether to approve a loan application pursuant to this section based upon the information submitted pursuant to subdivision (b). In making a decision regarding whether to approve a loan application, the department shall approve a loan pursuant to this section for a property only if the department determines the property is a brownfield or an underutilized property.

(d) The maximum amount of a loan granted pursuant to this section shall not exceed one hundred thousand dollars ($100,000).

(e) Except as provided in subdivision (f), upon approval of the loan application by the department, the loan recipient shall execute an agreement with the department to repay the loan over a period not to exceed two years. The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the loan application, any money so recovered shall be used first to repay the loan or repay the grant.

(f) If a loan recipient who is not the owner of the property and the department determine, after the completion of the preliminary endangerment assessment, that the sum of the cost of remediation and the property purchase price makes the redevelopment of the property not economically feasible, the department may waive the repayment of up to 75 percent of the loan, and the amount waived shall be deemed a grant to the loan recipient. If the department waives the repayment of part of the loan, the recipient shall repay the remaining portion of the loan within one year of that waiver.

(g) Upon approval of a loan, the recipient shall enter into an agreement with the department for the department to provide regulatory oversight of the preparation and approval of the preliminary endangerment assessment.

25395.22. (a) The department, with the approval of the secretary, shall establish a Cleanup Loans and Environmental Assistance to Neighborhoods Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments. A loan provided pursuant to this section shall not be used to pay for a phase I environmental assessment, a preliminary endangerment assessment, the department's oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

(b) The department shall develop an application form for a loan under the CLEAN program and shall include, in the form, any provisions that the department determines to be appropriate to carry out the CLEAN

program. The application shall be signed by the loan applicant and shall be accompanied by all of the following:

(1) A preliminary endangerment assessment that has been approved by the department, or an environmental assessment with equivalent information, that discloses the presence of a release or threatened release of a hazardous material at the property at concentrations that may pose a risk to public health and safety and the environment.

(2) The name and address of the project coordinator for the site and the resumé of the coordinator that demonstrates that the coordinator possesses the requisite qualifications to manage the response action at the site.

(3) Documentation that the property is an eligible property and, if the department has implemented the priority scoring system set forth in Section 25395.23, sufficient information to enable the department to determine the priority score for the property.

(4) Documentation that the planned future development of the site is consistent with the current and reasonably foreseeable future land uses of the property.

(5) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, documentation that demonstrates that the owner agrees to use the property as a security interest for the loan to finance necessary response action at the property.

(6) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, a copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(7) Any other information the department deems necessary.

25395.23. (a) The department, after consultation with the secretary, the Secretary of the Trade and Commerce Agency, the Secretary of the Business, Transportation and Housing Agency, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Section 25395.22. The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

(b) If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in subdivision (c). The department shall approve loans for a project based on its priority scores.

(c) The system for ranking loan applications pursuant to subdivision (b) shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(1) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(2) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Division 2 of Part 1 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(3) The potential for the project to provide additional protection of the public health and safety.

(4) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

(A) The creation of new jobs.

(B) Generation of additional tax revenue.

(C) The likelihood that the project will stimulate additional redevelopment in adjacent areas.

(D) The degree to which implementation of the project will improve local property values.

(E) The degree to which implementation of the project will result in the development of new parks.

(F) The extent to which the project may have a beneficial effect on the construction of new schools.

(G) The extent to which the project will result in the construction of affordable inner-city housing.

(H) The potential for the project to have a beneficial impact on existing local and regional infrastructure or projected infrastructure needs, or otherwise promote infill development.

(5) The economic viability of the project, including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary response actions have been completed.

(6) The ability of the loan applicant to successfully perform the response action at the site and repay the loan if funding is provided.

(7) The geographic location of the project, taking into consideration the number and amounts of loans approved for projects located in that area, as compared to those approved for other needy areas throughout the state.

(8) The degree of likelihood that the response action would not be completed if a loan pursuant to Section 25395.22 is not made, including whether any necessary response action is already being paid for by a responsible party pursuant to an administrative order, an agreement issued or entered into with a federal, state, or local agency, a judicial order, or a consent decree.

(9) The ability to obtain conventional financing absent a loan under this program.

25395.24. (a) The department may approve all, or part of, a loan request pursuant to Section 25395.23, except the maximum amount of a loan approved pursuant to Section 25395.23 shall not exceed two million five hundred thousand dollars ($2,500,000).

(b) The department shall not approve a loan pursuant to Section 25395.23 if the total debt against the eligible property subject to the release or threatened release of a hazardous material on which the response action will be taken exceeds 80 percent of the estimated value of the property after all necessary response actions are complete.

25395.25. Upon the approval of a loan pursuant to Section 25395.23, the loan recipient shall do both of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than five years.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money first to satisfy the loan.

(3) The agreement shall require that if the loan recipient is not the owner of the property, but intends to purchase the property before the loan is satisfied, the purchase price of the property shall not exceed its estimated current fair market value, not taking into consideration any necessary response action that may be conducted on the property.

(b) Enter into an agreement with the department for the oversight and approval of the response action at the site. This agreement shall be provided to the department before the department may release any loan funds to the loan recipient.

25395.26. (a) A loan approved pursuant to Section 25395.23 shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken. The department shall obtain an appropriate security interest in the property and this security interest shall have first lien priority. The department shall not subordinate this lien. The department may foreclose on property that is subject to a security interest pursuant to this section. Any

funds received through a foreclosure or through the enforcement of any other security interest pursuant to this article shall be deposited in the account.

(b) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because the department holds the security interest identified in subdivision (a) or because the department acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this article.

(c) Chapter 6.96 (commencing with Section 25548) does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to subdivision (a).

(d) (1) Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this article.

(2) The acquisition of a property pursuant to this article through foreclosure or its equivalent is not subject to Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(3) The department shall promptly dispose of any property acquired through the exercise of any security interest pursuant to this article at the property's current market value and the disposal of this property is exempt from Section 11011.1 of the Government Code and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) This article shall not be construed to limit, extend, or affect local land use and zoning authority.

25395.27. (a) Any response action carried out under this article shall be conducted in accordance with the requirements of this chapter and Chapter 6.65 (commencing with Section 25260). However, for purposes of Section 25262, the department shall be the administering agency for any site that is the subject of a loan under this article and no person may request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260).

(b) For sites that are the subject of a loan under this article, all references in this chapter to a hazardous substance shall be deemed to be a reference to a hazardous material.

(c) This chapter shall apply to a site that is the subject of a loan under this article, regardless of whether the site is on the list created pursuant to Section 25356.

(d) Except as provided in Section 25264, this article shall not be construed to limit the authority of the department to take any action otherwise authorized under any other provision of law.

(e) The department shall post, and update at least monthly, a list of loan applications received pursuant to this article on the department's Internet web site. The list shall include the name of the applicant, the location of the property that is the subject of the loan application, and a contact at the department for further information.

25395.29. The department may adopt regulations to implement this article as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

25395.30. The following persons are not eligible to apply for a loan under this article:

(a) A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under Section 25395.13.

(b) A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering.

(c) A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site.

(d) A person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to the secretary under this article.

25395.31. The rate of interest to be applied to loans made pursuant to this article shall be the same rate earned on investments in the Surplus Money Investment Fund during the loan repayment period. If a loan recipient defaults on a loan, the rate of interest to be applied to the loan shall be 10 percent from the date of default, or whatever greater rate is reflected in the agreement entered into pursuant to subdivision (a) of Section 25395.25.

25395.32. On or before January 10 of each year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy committees of the Senate and the Assembly, and shall post on the Internet web site of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Section 25395.21, the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to subdivision (f) of Section 25395.21.

(c) The number and dollar amount of loans approved pursuant to Section 25395.23, the number and dollar amount of those loans that have been repaid, and the number and dollar amount of those loans that are in default.

(d) The number of preliminary endangerment assessments completed pursuant to agreements entered into under this article.

(e) The number of sites where necessary response actions have been completed pursuant to agreements entered into under this article.

SEC. 24. (a) The sum of eighty-five million dollars ($85,000,000) that was transferred pursuant to Section 13 of Chapter 144 of the Statutes of 2000 to the Cleanup Loans and Environmental Assistance to Neighborhoods Account, which was established pursuant to Section 25395.20 of the Health and Safety Code, as added by Chapter 144 of the Statutes of 2000, is hereby transferred to the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 25395.20 of the Health and Safety Code, as added by this act, for expenditure to implement Article 8.5 (commencing with Section 25395.20) of Chapter 6.8 of Division 20 of the Health and Safety Code, as added by this act and to provide administrative support to the Secretary for Environmental Protection and the Department of Toxic Substances Control to implement that article.

(b) Of the amount transferred to the Cleanup Loans and Environmental Assistance to Neighborhoods Account pursuant to subdivision (a), two million dollars ($2,000,000) is hereby appropriated from that account to the Department of Toxic Substances Control for the implementation of Article 8.5 (commencing with Section 25395.20 of Chapter 6.8 of Division 20 of the Health and Safety Code in the 2000–01 fiscal year.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public health and safety, and the environment by expeditiously cleaning up property contaminated with hazardous substances, it is necessary that this act take effect immediately.

CHAPTER 913

An act to add and repeal Section 146.1 of the Financial Code, to amend Sections 16522 and 16612 of the Government Code, and to amend Section 44559.1 of the Health and Safety Code, relating to financial institutions.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 146.1 is added to the Financial Code, to read:

146.1. ''Small bank'' means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than two hundred fifty million dollars ($250,000,000) and was independent.

This section shall become inoperative on November 30, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. The California Research Bureau shall provide an annual report, until November 30, 2004, to the Legislature addressing the following:

(a) The disposition of all state funds.

(b) The names of financial institutions receiving state funds, and at what rates, with specific care being given to the location and disposition of the funds.

(c) The geographic location and use of the funds.

(d) The percentage of funds remaining in California and the percentage of funds invested out of state and out of the country.

SEC. 3. The California Research Bureau shall complete, by December 31, 2001, a study examining the following:

(a) The present geographic and socioeconomic disposition of California's state funds.

(b) The efforts made by state agencies in investing state funds to ensure the funds receive the best rates while satisfying other socially important goals, including keeping California's public funds working for Californians, and ensuring that a significant portion of publicly invested funds reach California's local communities.

(c) Additional efforts that can be made to keep California funds working for Californians while practicing prudent investment policies.

(d) The feasibility and social benefits of the following:

(1) Requiring the state to follow guidelines similar to the federal Community Reinvestment Act in its investment policies.

(2) Allocating funds for specific investment purposes.

(3) Mandating that a set percentage of California's public funds be used in California.

(4) Identifying impediments, if any, to community banks' receipt of public moneys, such as those from pooled money investment accounts.

(5) Creating a separate program for pooling deposits in California's community financial institutions to ensure that more public funds are used at the local level.

SEC. 4. Section 16522 of the Government Code is amended to read:

16522. The following securities may be received as security for demand and time deposits:

(a) Bonds, notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as those loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any county, city, town, metropolitan water district, municipal utility district, municipal water district, bridge and highway district, flood control district, school district, water district, water conservation district or irrigation district within this state, and, in addition, revenue or tax anticipation notes, and revenue bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by this state, or such local agency or district, or by a department, board, agency, or authority thereof.

(d) Registered warrants of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the Federal Home Loan Banks established under the Federal Home Loan Bank Act,

bonds, debentures and other obligations of the Federal National Mortgage Association and of the Government National Mortgage Association established under the National Housing Act as amended, in the bonds of any federal home loan bank established under said act, bonds, debentures, and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended.

(f) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 41700) of Part 3 of Division 31 of the Health and Safety Code.

(g) Promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:

(1) Notwithstanding Section 16521, the promissory notes shall at all times be in an amount in value at least 50 percent in excess of the amount deposited with the bank;

(2) The Treasurer issues regulations, establishes procedures for determining the value of the promissory notes and develops standards necessary to protect the security of the deposits so collateralized;

(3) The depository may exercise, enforce, or waive any right or power granted to it by promissory note, mortgage, or deed of trust; and

(4) The following may not be used as security for deposits:

(i) Any promissory note on which any payment is more than 90 days past due,

(ii) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust, or

(iii) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(h) Bonds issued by the State of Israel.

(i) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

(j) Any municipal securities, as defined by Section 3(a)(29) of the Securities Exchange Act of June 6, 1934, (15 U.S.C. 78, as amended), which are issued by this state or any local agency thereof.

(k) Letters of credit issued by the Federal Home Loan Bank of San Francisco, which shall be in the form and shall contain provisions as the Treasurer may prescribe, and shall include the following terms:

(1) The Treasurer shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable, and shall provide that the Treasurer may draw upon it up to the total amount in the event of the failure of the bank or if the bank refuses to permit the withdrawal of funds by the Treasurer or any other authorized state officer or employee.

SEC. 5. Section 16612 of the Government Code is amended to read:

16612. The following securities may be received as security for deposits:

(a) Bonds, notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as such loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949 (42 U.S.C. Sec. 1452 et seq.)) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any county, city, town, metropolitan water district, municipal utility district, municipal water district, bridge and highway district, flood control district, school district, water district, water conservation district or irrigation district within this state, and, in addition, revenue on tax anticipation notes, and revenue bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by this state, or such local agency or district, or by a department, board, agency, or authority thereof.

(d) Registered warrants of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the Federal Home Loan Banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association and of the Government National Mortgage Association established under the National Housing Act as amended, in the bonds of any federal home loan bank established under said act, bonds, debentures, and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and in bonds, notes, and other obligations issued by the

Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended.

(f) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 41700) of Part 3 of Division 31 of the Health and Safety Code.

(g) Promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:

(1) Notwithstanding Section 16611, the promissory notes shall at all times be in an amount in value at least 50 percent in excess of the amount deposited with the savings and loan association;

(2) The State Treasurer issues regulations, establishes procedures for determining the value of the promissory notes and develops standards necessary to protect the security of the deposits so collateralized;

(3) The depository may exercise, enforce, or waive any right or power granted to it by promissory note, mortgage, or deed of trust; and

(4) The following may not be used as security for deposits:

(i) Any promissory note on which any payment is more than 90 days past due,

(ii) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust, or

(iii) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(h) Bonds issued by the State of Israel.

(i) Letters of credit issued by the Federal Home Loan Bank of San Francisco, which shall be in the form and shall contain provisions as the Treasurer may prescribe, and shall include the following terms:

(1) The Treasurer shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable, and shall provide that the Treasurer may draw upon it up to the total amount in the event of the failure of the savings and loan association or credit union or if the savings and loan association or credit union refuses to permit the withdrawal of funds by the Treasurer or any other authorized state officer or employee.

SEC. 6. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise:

(a) ''Authority'' means the California Pollution Control Financing Authority.

(b) ''California Capital Access Fund'' means a fund created within the authority to be used for purposes of the program.

(c) ''Executive director'' means the Executive Director of the California Pollution Control Financing Authority.

(d) ''Financial institution'' means a federal or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent. ''Financial institution'' also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a Small Business Investment Company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations. A financial institution described in this subdivision shall be domiciled or have its principal office in the State of California.

(e) ''Loss reserve account'' means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purpose of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) ''Participating financial institution'' means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) ''Passive real estate ownership'' means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) ''Program'' means the Capital Access Loan Program created pursuant to this article.

(i) ''Qualified business'' means a small business concern that meets both of the following criteria:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) ''Qualified loan'' means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) ''Qualified loan'' does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) ''Severely affected community'' means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(*l*) ''Small Business Assistance Fund'' means a fund created within the authority that may only be used to pay the authority's contribution to a loss reserve account for a qualified small business that has operations that affect the environment.

(m) ''Small business concern'' has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 6.5. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise:

(a) ''Authority'' means the California Pollution Control Financing Authority.

(b) ''California Capital Access Fund'' means a fund created within the authority to be used for purposes of the program.

(c) ''Executive director'' means the Executive Director of the California Pollution Control Financing Authority.

(d) ''Financial institution'' means a federal or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent. ''Financial institution'' also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a Small Business Investment Company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations. A financial institution described in this subdivision shall be domiciled or have its principal office in the State of California.

(e) ''Loss reserve account'' means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) ''Participating financial institution'' means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article

and as may be required by any applicable federal law providing matching funding.

(g) ''Passive real estate ownership'' means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) ''Program'' means the Capital Access Loan Program created pursuant to this article.

(i) ''Qualified business'' means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) ''Qualified loan'' means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) ''Qualified loan'' does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) ''Severely affected community'' means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as

amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(*l*) ''Small Business Assistance Fund'' means a fund created within the authority pursuant to Section 44548.

(m) ''Small business concern'' has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 7. Section 6.5 of this bill incorporates amendments to Section 44559.1 of the Health and Safety Code proposed by both this bill and SB 1986. 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 44559.1 of the Health and Safety Code, and (3) this bill is enacted after SB 1986, in which case Section 6 of this bill shall not become operative.

CHAPTER 914

An act to amend Sections 44501, 44502, 44520, and 44526 of, and to add and repeal Sections 44525.5 and 44525.6 of, the Health and Safety Code, relating to pollution.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 44501 of the Health and Safety Code is amended to read:

44501. (a) The Legislature hereby finds and declares that it is necessary and essential that the state, in cooperation with the federal government, use all practical means and measures to control, remediate, and eliminate pollution hazards to the environment. The Legislature further finds and determines that industry within this state utilizes processes and facilities that have significant environmental impact. These processes and facilities shall be modified and supplemented to meet the quality standards established and to be established for the control and remediation of environmental pollution. Industry needs and requires new methods to finance the capital outlays required for the devices, equipment, and facilities utilized in pollution control if they are to rapidly comply with the quality standards established by the state and federal governments, and if they are to rapidly remediate contaminated properties so that those properties can be reused for economically beneficial purposes.

(b) The Legislature also finds and declares that the disposal of waste products by such current methods as incineration and landfill pollute the environment by degrading air and water quality. The Legislature further finds that in order to reduce the environmental pollution that currently occurs in connection with the disposal of waste products, there is a need to develop new and alternative processes and facilities that provide for the disposal of those waste products in ways that prevent or reduce environmental degradation. The Legislature also finds that those new and alternative processes and facilities include those that recover resources and energy from waste products. The Legislature further finds and declares that in order to prevent further environmental degradation resulting from contamination caused by the release of waste products and hazardous materials, there is a need to encourage the remediation of that contamination of properties with the potential for economically beneficial reuse.

(c) The alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the State of California.

(d) The Legislature also finds and declares that California is expected to undergo tremendous population growth by the addition of an estimated five million new jobs, 12 million new residents, and over four million new households over the next 20 years. This constitutes more rapid growth than California experienced during the 1950's, 1960's, and 1970's, combined. The Legislature also finds that as a result of this unprecedented growth, the long-term environmental quality of the state depends, in part, on altering current growth patterns by adopting policies and programs that promote new forms of sustainable development and that will help reduce pollution and the degradation of the environment. The Legislature also finds that a key element of sustainable development is infill development and the revitalization of existing communities. Sustainable development will result in the remediation of brownfields, reduce traffic and auto pollution, and help preserve open spaces. The Legislature also finds that many communities in California do not have the resources or expertise to identify and compete for state, federal, or private assistance in order to develop and implement environmentally sensitive growth policies and programs for economically struggling neighborhoods. The Legislature further finds and declares that assisting economically distressed cities and counties to develop and implement sustainable and environmentally sensitive growth policies and programs that increase the utilization of unproductive properties within existing communities will help reduce environmental hazards created by brownfields and traffic congestion, while aiding in the revitalization of economically struggling neighborhoods and the preservation of open space at the urban edges. The grant and loan program provided in this

division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the State of California.

SEC. 1.5. Section 44501 of the Health and Safety Code is amended to read:

44501. (a) The Legislature hereby finds and declares that it is necessary and essential that the state, in cooperation with the federal government, use all practical means and measures to control, remediate, and eliminate pollution hazards to the environment. The Legislature further finds and determines that industry within this state utilizes processes and facilities that have significant environmental impact. These processes and facilities shall be modified and supplemented to meet the quality standards established and to be established for the control and remediation of environmental pollution. Industry needs and requires new methods to finance the capital outlays required for the devices, equipment, and facilities utilized in pollution control if they are to rapidly comply with the quality standards established by the state and federal governments, and if they are to rapidly remediate contaminated properties so that those properties can be reused for economically beneficial purposes.

(b) The Legislature also finds and declares that the disposal of waste products by such current methods as incineration and landfill pollute the environment by degrading air and water quality. The Legislature further finds that in order to reduce the environmental pollution that currently occurs in connection with the disposal of waste products, there is a need to develop new and alternative processes and facilities that provide for the disposal of those waste products in ways that prevent or reduce environmental degradation. The Legislature also finds that those new and alternative processes and facilities include those that recover resources and energy from waste products. The Legislature further finds and declares that in order to prevent further environmental degradation resulting from contamination caused by the release of waste products and hazardous materials, there is a need to encourage the remediation of that contamination of properties with the potential for economically beneficial reuse.

(c) The alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the State of California.

(d) The Legislature also finds and declares that California is expected to undergo tremendous population growth by the addition of an estimated five million new jobs, 12 million new residents, and over four million new households over the next 20 years. This constitutes more rapid growth than California experienced during the 1950's, 1960's, and 1970's, combined. The Legislature also finds that as a result of this

unprecedented growth, the long-term environmental quality of the state depends, in part, on altering current growth patterns by adopting policies and programs that promote new forms of sustainable development and that will help reduce pollution and the degradation of the environment. The Legislature also finds that a key element of sustainable development is infill development and the revitalization of existing communities. Sustainable development will result in the remediation of brownfields, reduce traffic and auto pollution, and help preserve open spaces. The Legislature also finds that many communities in California do not have the resources or expertise to identify and compete for state, federal, or private assistance in order to develop and implement environmentally sensitive growth policies and programs for economically struggling neighborhoods. The Legislature further finds and declares that assisting economically distressed cities and counties to develop and implement sustainable and environmentally sensitive growth policies and programs that increase the utilization of unproductive properties within existing communities will help reduce environmental hazards created by brownfields and traffic congestion, while aiding in the revitalization of economically struggling neighborhoods and the preservation of open space at the urban edges. The grant and loan program provided in this division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the State of California.

(e) (1) The Legislature also finds and declares that real property contaminated with hazardous substances is a continuing blight on communities. Estimates suggest there are between 67,000 and 119,000 contaminated sites, commonly referred to as ''brownfields,'' throughout the state. Located in existing communities, many of these sites are abandoned, idle, or underutilized due to a combination of factors, including legal liability concerns, regulatory issues, and the costs of pollution cleanup. Additionally, many of the undeveloped brownfields in the state are located within communities with depressed land values and pressing economic need, communities often characterized by a lack of capital investment. The remediation and development of brownfields is an important component of revitalizing existing communities and supporting sustainable growth patterns. While remediation and development activities should focus on brownfield sites that, although contaminated, have the potential for economically beneficial reuse, there currently exist few, if any, sources for financing the assessment, planning, and reporting activities that are the necessary first steps toward determining whether a site has the potential for economically beneficial reuse.

(2) The Legislature finds and declares that the California Pollution Control Financing Authority should work in conjunction with public

and private sector entities, including, but not limited to, cities, counties, school districts, redevelopment agencies, and financial institutions, to assist in financing through loans, the costs of performing or obtaining site assessments, remedial action plans and reports, and technical assistance, and, where it is determined that a site has the potential for economically beneficial reuse, the cleanup, remediation, or development of brownfield sites. The loan program provided by this division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the State of California.

SEC. 2. Section 44502 of the Health and Safety Code is amended to read:

44502. It is the purpose of this division to carry out and make effective the findings of the Legislature and to that end to do both of the following, to the mutual benefit of the people of the state and to protect their health and welfare:

(a) To provide industry within the state, irrespective of company size, with an alternative method of financing in providing, enlarging, and establishing pollution control facilities that are needed to accomplish the purposes of this division.

(b) To assist economically distressed counties and cities to develop and implement growth policies and programs that reduce pollution hazards and the degradation of the environment or promote infill development.

SEC. 2.5. Section 44502 of the Health and Safety Code is amended to read:

44502. It is the purpose of this division to carry out and make effective the findings of the Legislature and to that end to do all of the following, to the mutual benefit of the people of the state and to protect their health and welfare:

(a) To provide industry within the state, irrespective of company size, with an alternative method of financing in providing, enlarging, and establishing pollution control facilities that are needed to accomplish the purposes of this division.

(b) To assist economically distressed counties and cities to develop and implement growth policies and programs that reduce pollution hazards and the degradation of the environment or promote infill development.

(c) To assist with the financing of the costs of assessment, remedial planning and reporting, technical assistance, and the cleanup, remediation, or development of brownfield sites, or other similar or related costs.

SEC. 3. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans authorized under subdivision (g) of Section 44526 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

SEC. 3.5. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and

assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans authorized under subdivision (g) of Section 44526 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

SEC. 4. Section 44525.5 is added to the Health and Safety Code, to read:

44525.5. (a) The authority may also charge reasonable application and project fees to reimburse the authority for costs incurred in administering applications for grants and loans authorized by subdivision (e) of Section 44526.

(b) This section shall not become operative if Senate Bill 1986 of the 1999–2000 Regular Session is enacted after Assembly Bill 779 of the 1999–2000 Regular Session and adds subdivision (g) to Section 44526.

SEC. 4.5. Section 44525.5 is added to the Health and Safety Code, to read:

44525.5. (a) The authority may also charge reasonable application and project fees to reimburse the authority for costs incurred in administering applications for loans authorized by subdivision (g) of Section 44526.

(b) This section shall become operative only if Senate Bill 1986 of the 1999–2000 Regular Session is enacted after Assembly Bill 779 of the 1999–2000 Regular Session and adds subdivision (g) to Section 44526.

SEC. 5. Section 44525.6 is added to the Health and Safety Code, to read:

44525.6. (a) Commencing in 2002, and annually thereafter, the authority shall submit a report to the Legislature regarding the loan and grant program described in subdivision (e) of Section 44526 describing the total amount of loans and grants awarded pursuant to subdivision (e) of Section 44526 in the previous calendar year, the amount of each loan or grant awarded, and a description of the programs awarded funding.

(b) This section shall not become operative if Senate Bill 1986 of the 1999–2000 Regular Session is enacted after Assembly Bill 779 of the 1999–2000 Regular Session and adds subdivision (g) to Section 44526.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

SEC. 5.5. Section 44525.6 is added to the Health and Safety Code, to read:

44525.6. (a) Commencing in 2002, and annually thereafter, the authority shall submit a report to the Legislature regarding the loan program described in subdivision (g) of Section 44526 describing the total amount of loans issued pursuant to subdivision (g) of Section 44526 in the previous calendar year, the amount of each loan issued, and a description of the programs awarded funding.

(b) This section shall become operative only if Senate Bill 1986 of the 1999–2000 Regular Session is enacted after Assembly Bill 779 of the 1999–2000 Regular Session and adds subdivision (g) to Section 44526.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

SEC. 6. Section 44526 of the Health and Safety Code is amended to read:

44526. The authority is authorized:

(a) To determine the location and character of any project to be financed under the provisions of this division, to lend financial assistance to any participating party, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into contracts for the sale of any pollution control facilities, including installment sales or sales under conditional sales contracts, and to make

loans to participating parties to lend financial assistance in the acquisition, construction, or installation of a project.

(b) To issue bonds, notes, bond anticipation notes, and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this division.

(c) To fix fees and charges for pollution control facilities, and to revise from time to time those fees and charges, and to collect rates, rents, fees, and charges for the use of and for any facilities or services furnished, or to be furnished, by a project or any part thereof and to contract with any person, partnership, association, corporation, or public agency with respect thereto, and to fix the terms and conditions upon which any pollution control facilities may be sold or disposed of, whether upon installment sales contracts or otherwise.

(d) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in connection with the issuance and sale of any bonds, notes, bond anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate agencies as may be necessary in the judgment of the authority for the successful development of any project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by any participating party if, in the judgment of the authority, those services are necessary to the successful development of any project, and those services are not obtainable from any public agency.

(e) To provide grants and loans to any city or county deemed eligible by the authority. The grants and loans shall be used to assist California neighborhoods suffering from high poverty or unemployment levels, or from low-income levels, to assist cities and counties in developing and implementing growth policies and programs that reduce pollution hazards and the degradation of the environment, or in promoting infill development to revitalize these communities. The grants and loans may be used to employ the technical expertise necessary to identify, assess, and complete applications for state, federal, and private economic assistance programs that develop and implement sustainable development and sound environmental policies and programs. Priority shall be given to applicants lacking the resources to identify, assess, and complete applications for economic assistance, and for those lacking the resources to develop and implement sustainable growth and other sound environmental policies and programs. The authority shall fund these grants and loans from any funds available to the authority or set aside for the authority's administrative expenses. The authority may not award more than two million five hundred thousand dollars ($2,500,000) in grants and loans pursuant to this subdivision. This subdivision shall

remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(f) To do all things generally necessary or convenient to carry out the purposes of this division.

SEC. 6.5. Section 44526 of the Health and Safety Code is amended to read:

44526. The authority is authorized:

(a) To determine the location and character of any project to be financed under the provisions of this division, to lend financial assistance to any participating party, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into contracts for the sale of any pollution control facilities, including installment sales or sales under conditional sales contracts, and to make loans to participating parties to lend financial assistance in the acquisition, construction, or installation of a project.

(b) To issue bonds, notes, bond anticipation notes, and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this division.

(c) To fix fees and charges for pollution control facilities, and to revise from time to time those fees and charges, and to collect rates, rents, fees, and charges for the use of and for any facilities or services furnished, or to be furnished, by a project or any part thereof and to contract with any person, partnership, association, corporation, or public agency with respect thereto, and to fix the terms and conditions upon which any pollution control facilities may be sold or disposed of, whether upon installment sales contracts or otherwise.

(d) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in connection with the issuance and sale of any bonds, notes, bond anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate agencies as may be necessary in the judgment of the authority for the successful development of any project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by any participating party if, in the judgment of the authority, those services are necessary to the successful development of any project, and those services are not obtainable from any public agency.

(e) To receive and accept loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, the authority in carrying out the purposes of this division, from any source including, but not limited to, the federal government, the state, or any agency of the

state, any local government or agency thereof, or any nonprofit or for-profit private entity or individual.

(f) To apply for, and accept, subventions, grants, loans, advances, and contributions from any source, of money, property, labor, or other things of value. The sources may include, but are not limited to, bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account.

(g) To provide grants and loans to any city or county deemed eligible by the authority. The grants and loans shall be used to assist California neighborhoods suffering from high poverty or unemployment levels, or from low-income levels, to assist cities and counties in developing and implementing growth policies and programs that reduce pollution hazards and the degradation of the environment, or in promoting infill development to revitalize these communities. The grants and loans may be used to employ the technical expertise necessary to identify, assess, and complete applications for state, federal, and private economic assistance programs that develop and implement sustainable development and sound environmental policies and programs. Priority shall be given to applicants lacking the resources to identify, assess, and complete applications for economic assistance, and for those lacking the resources to develop and implement sustainable growth and other sound environmental policies and programs. The authority shall fund these grants and loans from any funds available to the authority or set aside for the authority's administrative expenses. The authority may not award more than two million five hundred thousand dollars ($2,500,000) in grants and loans pursuant to this subdivision. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(h) (1) To provide a loan, directly, or indirectly through one or more public or private sector intermediaries, to any city, county, school district, redevelopment agency, financial institution, as defined by subdivision (d) of Section 44559.1, for-profit or not-for-profit organization, or participating party, as defined in Section 44506, to assist in financing, among other things, the costs of performing or obtaining brownfield site assessments, remedial action plans and reports, technical assistance, the cleanup, remediation, or development of brownfield sites, or any other similar or related costs, subject to all applicable federal, state, and local laws, procedures, and regulations.

(2) The authority shall establish standards and criteria to ensure that a recipient of direct or indirect financing for cleanup or remediation pursuant to this subdivision has the necessary financial resources and

expertise to successfully and appropriately complete the cleanup or remediation of the property.

(3) The authority may pay all, or a portion, of the associated program development and implementation costs of any public or private sector intermediaries through which a loan is made. A loan authorized by this subdivision is subject to both of the following:

(A) A loan may be used in connection with a brownfield site prior to a determination of whether the site has a reasonable potential for economically beneficial reuse.

(B) A loan may be made upon the terms determined by the authority and may provide for any rate of interest or no interest.

(4) The authority shall fund a loan made pursuant to this subdivision from any funds available to it, from any funds set aside for the authority's administrative expenses, or from any small business assistance fund established for these purposes pursuant to Section 44548.

(5) The authority may waive repayment of all, or a portion, of any loan made pursuant to this subdivision, upon the conditions to be determined by the authority, and the amount so waived shall be deemed a grant to the recipient.

(i) To do all things generally necessary or convenient to carry out the purposes of this division.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 44501 of the Health and Safety Code proposed by both this bill and SB 1986. 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 44501 of the Health and Safety Code, and (3) this bill is enacted after SB 1986, in which case Section 1 of this bill shall not become operative.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 44502 of the Health and Safety Code proposed by both this bill and SB 1986. 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 44502 of the Health and Safety Code, and (3) this bill is enacted after SB 1986, in which case Section 2 of this bill shall not become operative.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 44520 of the Health and Safety Code proposed by both this bill and SB 1986. 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 44520 of the Health and Safety Code, and (3) this bill is enacted after SB 1986, in which case Section 3 of this bill shall not become operative.

SEC. 10. Section 6.5 of this bill incorporates amendments to Section 44526 of the Health and Safety Code proposed by both this bill

and SB 1986. 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 44526 of the Health and Safety Code, and (3) this bill is enacted after SB 1986, in which case Section 6 of this bill shall not become operative.

CHAPTER 915

An act to amend Sections 44501, 44502, 44507, 44520, 44525, 44526, 44537.5, 44548, 44559, 44559.1, and 44559.2 of, and to add Sections 44504.1 and 44525.7 to, the Health and Safety Code, relating to pollution.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 44501 of the Health and Safety Code is amended to read:

44501. (a) The Legislature hereby finds and declares that it is necessary and essential that the state, in cooperation with the federal government, use all practical means and measures to control, remediate, and eliminate pollution hazards to the environment. The Legislature further finds and determines that industry within this state utilizes processes and facilities that have significant environmental impact. These processes and facilities shall be modified and supplemented to meet the quality standards established and to be established for the control and remediation of environmental pollution. Industry needs and requires new methods to finance the capital outlays required for the devices, equipment, and facilities utilized in pollution control if they are to rapidly comply with the quality standards established by the state and federal governments, and if they are to rapidly remediate contaminated properties so that those properties can be reused for economically beneficial purposes.

(b) The Legislature also finds and declares that the disposal of waste products by current methods as incineration and landfill pollute the environment by degrading air and water quality. The Legislature further finds that in order to reduce the environmental pollution that currently occurs in connection with the disposal of waste products, there is a need to develop new and alternative processes and facilities that provide for the disposal of those waste products in ways that prevent or reduce environmental degradation. The Legislature also finds that those new

and alternative processes and facilities include those that recover resources and energy from waste products. The Legislature further finds and declares that in order to prevent further environmental degradation resulting from contamination caused by the release of waste products and hazardous materials, there is a need to encourage the remediation of that contamination of properties with the potential for economically beneficial reuse.

(c) The alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the State of California.

(d) (1) The Legislature also finds and declares that real property contaminated with hazardous substances is a continuing blight on communities. Estimates suggest there are between 67,000 and 119,000 contaminated sites, commonly referred to as ''brownfields,'' throughout the state. Located in existing communities, many of these sites are abandoned, idle, or underutilized due to a combination of factors including legal liability concerns, regulatory issues, and the costs of pollution cleanup. Additionally, many of the undeveloped brownfields in the state are located within communities with depressed land values and pressing economic need, communities often characterized by a lack of capital investment. The remediation and development of brownfields is an important component of revitalizing existing communities and supporting sustainable growth patterns. While remediation and development activities should focus on brownfield sites that, although contaminated, have the potential for economically beneficial reuse, there currently exist few, if any, sources for financing the assessment, planning, and reporting activities that are the necessary first steps toward determining whether a site has the potential for economically beneficial reuse.

(2) The Legislature finds and declares that the California Pollution Control Financing Authority should work in conjunction with public and private sector entities, including, but not limited to, cities, counties, school districts, redevelopment agencies, and financial institutions, to assist in financing the costs of performing or obtaining site assessments, remedial action plans technical assistance, and, reports, and where it is determined that a site has the potential for economically beneficial reuse, the cleanup, remediation, or development of brownfield sites. The loan program provided by this division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the State of California.

SEC. 1.5. Section 44501 of the Health and Safety Code is amended to read:

44501. (a) The Legislature hereby finds and declares that it is necessary and essential that the state, in cooperation with the federal

government, use all practical means and measures to control, remediate, and eliminate pollution hazards to the environment. The Legislature further finds and determines that industry within this state utilizes processes and facilities that have significant environmental impact. These processes and facilities shall be modified and supplemented to meet the quality standards established and to be established for the control and remediation of environmental pollution. Industry needs and requires new methods to finance the capital outlays required for the devices, equipment, and facilities utilized in pollution control if they are to rapidly comply with the quality standards established by the state and federal governments, and if they are to rapidly remediate contaminated properties so that those properties can be reused for economically beneficial purposes.

(b) The Legislature also finds and declares that the disposal of waste products by such current methods as incineration and landfill pollute the environment by degrading air and water quality. The Legislature further finds that in order to reduce the environmental pollution that currently occurs in connection with the disposal of waste products, there is a need to develop new and alternative processes and facilities that provide for the disposal of those waste products in ways that prevent or reduce environmental degradation. The Legislature also finds that those new and alternative processes and facilities include those that recover resources and energy from waste products. The Legislature further finds and declares that in order to prevent further environmental degradation resulting from contamination caused by the release of waste products and hazardous materials, there is a need to encourage the remediation of that contamination of properties with the potential for economically beneficial reuse.

(c) The alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the State of California.

(d) The Legislature also finds and declares that California is expected to undergo tremendous population growth by the addition of an estimated five million new jobs, 12 million new residents, and over four million new households over the next 20 years. This constitutes more rapid growth than California experienced during the 1950's, 1960's, and 1970's, combined. The Legislature also finds that as a result of this unprecedented growth, the long-term environmental quality of the state depends, in part, on altering current growth patterns by adopting policies and programs that promote new forms of sustainable development and that will help reduce pollution and the degradation of the environment. The Legislature also finds that a key element of sustainable development is infill development and the revitalization of existing communities. Sustainable development will result in the remediation of brownfields,

reduce traffic and auto pollution, and help preserve open spaces. The Legislature also finds that many communities in California do not have the resources or expertise to identify and compete for state, federal, or private assistance in order to develop and implement environmentally sensitive growth policies and programs for economically struggling neighborhoods. The Legislature further finds and declares that assisting economically distressed counties and cities to develop and implement sustainable and environmentally sensitive growth policies and programs that increase the utilization of unproductive properties within existing communities will help reduce environmental hazards created by brownfields and traffic congestion, while aiding in the revitalization of economically struggling neighborhoods and the preservation of open space at the urban edges. The grant and loan program provided in this division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the State of California.

(e) (1) The Legislature also finds and declares that real property contaminated with hazardous substances is a continuing blight on communities. Estimates suggest there are between 67,000 and 119,000 contaminated sites, commonly referred to as ''brownfields,'' throughout the state. Located in existing communities, many of these sites are abandoned, idle, or underutilized due to a combination of factors, including legal liability concerns, regulatory issues, and the costs of pollution cleanup. Additionally, many of the undeveloped brownfields in the state are located within communities with depressed land values and pressing economic need, communities often characterized by a lack of capital investment. The remediation and development of brownfields is an important component of revitalizing existing communities and supporting sustainable growth patterns. While remediation and development activities should focus on brownfield sites that, although contaminated, have the potential for economically beneficial reuse, there currently exist few, if any, sources for financing the assessment, planning, and reporting activities that are the necessary first steps toward determining whether a site has the potential for economically beneficial reuse.

(2) The Legislature finds and declares that the California Pollution Control Financing Authority should work in conjunction with public and private sector entities, including, but not limited to, cities, counties, school districts, redevelopment agencies, and financial institutions, to assist in financing, through loans, the cost of performing or obtaining site assessments , remedial action plans technical assistance, and, reports, and where it is determined that a site has the potential for economically beneficial reuse, the cleanup, remediation, or development of brownfield sites. The loan program provided by this

division is in the public interest, serves a public purpose, and will promote the health, welfare, and safety of the citizens of the State of California.

SEC. 2. Section 44502 of the Health and Safety Code is amended to read:

44502. It is the purpose of this division to carry out and make effective the findings of the Legislature and to that end to do both of the following, to the mutual benefit of the people of the state and to protect their health and welfare:

(1) To provide industry within the state, irrespective of company size, with an alternative method of financing in providing, enlarging, and establishing pollution control facilities that are needed to accomplish the purposes of this division.

(2) To assist with the financing of the costs of assessment, remedial planning and reporting, technical assistance, and the cleanup, remediation, or development of brownfield sites, or other similar or related costs.

SEC. 2.5. Section 44502 of the Health and Safety Code is amended to read:

44502. It is the purpose of this division to carry out and make effective the findings of the Legislature and to that end to do all of the following, to the mutual benefit of the people of the state and to protect their health and welfare:

(a) To provide industry within the state, irrespective of company size, with an alternative method of financing in providing, enlarging, and establishing pollution control facilities that are needed to accomplish the purposes of this division.

(b) To assist economically distressed counties and cities to develop and implement growth policies and programs that reduce pollution hazards and the degradation of the environment or promote infill development.

(c) To assist with the financing of the costs of assessment, remedial planning and reporting, technical assistance, and the cleanup, remediation, or development of brownfield sites, or other similar or related costs.

SEC. 3. Section 44504.1 is added to the Health and Safety Code, to read:

44504.1. ''Brownfield site'' means a real estate parcel or improvements located on the parcel, or both that parcel and the improvements, which is abandoned, idled, or underused, due to real or perceived environmental contamination, including, but not limited to, soil or groundwater contamination, the presence of underground storage tanks, or the presence of asbestos or lead paint on the parcel or in the improvements located on the parcel, which after assessment and

planning, is determined to have a reasonable potential for economically beneficial reuse.

SEC. 4. Section 44507 of the Health and Safety Code is amended to read:

44507. ''Pollution'' means an alteration of the quality of the environment of the state and shall be determined by the various standards prescribed from time to time by this state, the federal government, or any agency, department, or political subdivision of this state or the federal government, and may include, but is not limited to, earth, air, or water pollution, pollution caused by solid or hazardous waste disposal, thermal pollution, radiation contamination, the release of hazardous materials, or noise pollution. Pollution also includes, but is not limited to, the contamination of soil or groundwater resulting from the release of hazardous materials, as defined in Section 25260, or the presence of asbestos or lead paint, at sites with a reasonable potential for economically beneficial reuse.

SEC. 5. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

SEC. 5.5. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of

the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans authorized under subdivision (g) of Section 44526 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

SEC. 6. Section 44525 of the Health and Safety Code is amended to read:

44525. (a) The authority may charge reasonable application and project fees to reimburse the authority for costs incurred in administering applications for financing pursuant to this division and to support authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 8 (commencing with Section 44559), and loans, as authorized by subdivision (g) of Section 44526.

(b) This section shall become operative only if Assembly Bill 779 of the 1999–2000 Regular Session is not enacted.

SEC. 6.6. Section 44525 of the Health and Safety Code is amended to read:

44525. (a) The authority may charge reasonable application and project fees to reimburse the authority for costs incurred in administering applications for financing pursuant to this division and to support authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 8 (commencing with Section 44559, and loans, as authorized by subdivision (h) of Section 44526.

(b) This section shall become operative only if Assembly Bill 779 of the 1999–2000 Regular Session is enacted.

SEC. 7. Section 44525.7 is added to the Health and Safety Code, to read:

44525.7. (a) Commencing in 2002, and annually thereafter, the authority shall submit a report to the Legislature regarding the loan program described in subdivision (g) of Section 44526.

(b) This section shall not become operative if Assembly Bill 779 of the 1999–2000 Regular Session is enacted.

SEC. 7.5. Section 44525.7 is added to the Health and Safety Code, to read:

44525.7. (a) Commencing in 2002, and annually thereafter, the authority shall submit a report to the Legislature regarding the loan program described in subdivision (h) of Section 44526.

(b) This section shall become operative only if Assembly Bill 779 of the 1999–2000 Regular Session is enacted.

SEC. 8. Section 44526 of the Health and Safety Code is amended to read:

44526. The authority is authorized:

(a) To determine the location and character of any project to be financed under the provisions of this division, to lend financial assistance to any participating party, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into contracts for the sale of any pollution control facilities, including installment sales or sales under conditional sales contracts, and to make loans to participating parties to lend financial assistance in the acquisition, construction, or installation of a project.

(b) To issue bonds, notes, bond anticipation notes, and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this division.

(c) To fix fees and charges for pollution control facilities, and to revise from time to time those fees and charges, and to collect rates, rents, fees, and charges for the use of and for any facilities or services furnished, or to be furnished, by a project or any part thereof and to

contract with any person, partnership, association, corporation, or public agency with respect thereto, and to fix the terms and conditions upon which any pollution control facilities may be sold or disposed of, whether upon installment sales contracts or otherwise.

(d) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in connection with the issuance and sale of any bonds, notes, bond anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate agencies as may be necessary in the judgment of the authority for the successful development of any project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by any participating party if, in the judgment of the authority, those services are necessary to the successful development of any project, and those services are not obtainable from any public agency.

(e) To receive and accept loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, the authority in carrying out the purposes of this division, from any source including, but not limited to, the federal government, the state, or any agency of the state, any local government or agency thereof, or any nonprofit or for-profit private entity or individual.

(f) To apply for, and accept, subventions, grants, loans, advances, and contributions from any source, of money, property, labor, or other things of value. The sources may include, but are not limited to, bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account.

(g) (1) To provide a loan directly, or indirectly through one or more public or private sector intermediaries, to any city, county, school district, redevelopment agency, financial institution, as defined in subdivision (d) of Section 44559.1, a for-profit or not-for-profit organization, or participating party, as defined in Section 44506, to assist in financing, among other things, the costs of performing or obtaining brownfield site assessments, remedial action plans and reports, technical assistance, the cleanup, remediation, or development of brownfield sites, or any other similar or related costs, subject to all applicable federal, state, and local laws, procedures, and regulations.

(2) The authority shall establish standards and criteria to ensure that a recipient of direct or indirect financing for cleanup or remediation pursuant to this subdivision has the necessary financial resources and expertise to successfully and appropriately complete the cleanup or remediation of the property.

(3) The authority may pay all, or a portion, of the associated program development and implementation costs of any public or private sector intermediaries through which a loan is made. A loan authorized by this subdivision is subject to both of the following:

(A) A loan may be used in connection with a brownfield site prior to a determination of whether the site has a reasonable potential for economically beneficial reuse.

(B) A loan may be made upon the terms determined by the authority and may provide for any rate of interest or no interest.

(4) The authority shall fund a loan made pursuant to this subdivision from any funds available to it, from any funds set aside for the authority's administrative expenses, or from any small business assistance fund established for these purposes pursuant to Section 44548.

(5) The authority may waive repayment of all, or a portion, of any loan made pursuant to this subdivision upon conditions to be determined by the authority, and the amount so waived shall be deemed a grant to the recipient.

(h) To do all things generally necessary or convenient to carry out the purposes of this division.

SEC. 8.5. Section 44526 of the Health and Safety Code is amended to read:

44526. The authority is authorized:

(a) To determine the location and character of any project to be financed under the provisions of this division, to lend financial assistance to any participating party, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into contracts for the sale of any pollution control facilities, including installment sales or sales under conditional sales contracts, and to make loans to participating parties to lend financial assistance in the acquisition, construction, or installation of a project.

(b) To issue bonds, notes, bond anticipation notes, and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this division.

(c) To fix fees and charges for pollution control facilities, and to revise from time to time those fees and charges, and to collect rates, rents, fees, and charges for the use of and for any facilities or services furnished, or to be furnished, by a project or any part thereof and to contract with any person, partnership, association, corporation, or public agency with respect thereto, and to fix the terms and conditions upon which any pollution control facilities may be sold or disposed of, whether upon installment sales contracts or otherwise.

(d) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in connection with the issuance and sale of any bonds, notes, bond

anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate agencies as may be necessary in the judgment of the authority for the successful development of any project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by any participating party if, in the judgment of the authority, those services are necessary to the successful development of any project, and those services are not obtainable from any public agency.

(e) To receive and accept loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, the authority in carrying out the purposes of this division, from any source including, but not limited to, the federal government, the state, or any agency of the state, any local government or agency thereof, or any nonprofit or for-profit private entity or individual.

(f) To apply for, and accept, subventions, grants, loans, advances, and contributions from any source, of money, property, labor, or other things of value. The sources may include, but are not limited to, bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account.

(g) To provide grants and loans to any city or county deemed eligible by the authority. The grants and loans shall be used to assist California neighborhoods suffering from high poverty or unemployment levels, or from low-income levels, to assist cities and counties in developing and implementing growth policies and programs that reduce pollution hazards and the degradation of the environment, or in promoting infill development to revitalize these communities. The grants and loans may be used to employ the technical expertise necessary to identify, assess, and complete applications for state, federal, and private economic assistance programs that develop and implement sustainable development and sound environmental policies and programs. Priority shall be given to applicants lacking the resources to identify, assess, and complete applications for economic assistance, and for those lacking the resources to develop and implement sustainable growth and other sound environmental policies and programs. The authority shall fund these grants and loans from any funds available to the authority or set aside for the authority's administrative expenses. The authority may not award more than two million five hundred thousand dollars ($2,500,000) in grants and loans pursuant to this subdivision. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(h) (1) To provide a loan directly, or indirectly through one or more public or private sector intermediaries, to any city, county, school district, redevelopment agency, financial institution, as defined in subdivision (d) of Section 44559.1, for-profit or not-for-profit organization, or participating party, as defined in Section 44506, to assist in financing, among other things, the costs of performing or obtaining brownfield site assessments, remedial action plans and reports, technical assistance, the cleanup, remediation, or development of brownfield sites, or any other similar or related costs, subject to all applicable federal, state, and local laws, procedures, and regulations.

(2) The authority shall establish standards and criteria to ensure that a recipient of direct or indirect financing for cleanup or remediation pursuant to this subdivision has the necessary financial resources and expertise to successfully and appropriately complete the cleanup or remediation of the property.

(3) The authority may pay all, or a portion, of the associated program development and implementation costs of any public or private sector intermediaries through which a loan is made. A loan authorized by this subdivision is subject to both of the following:

(A) A loan may be used in connection with a brownfield site prior to a determination of whether the site has a reasonable potential for economically beneficial reuse.

(B) A loan may be made upon the terms determined by the authority and may provide for any rate of interest or no interest.

(4) The authority shall fund a loan made pursuant to this subdivision from any funds available to it, from any funds set aside for the authority's administrative expenses, or from any small business assistance fund established for these purposes pursuant to Section 44548.

(5) The authority may waive repayment of all, or a portion, of any loan made pursuant to this subdivision upon conditions to be determined by the authority, and the amount so waived shall be deemed a grant to the recipient.

(i) To do all things generally necessary or convenient to carry out the purposes of this division.

SEC. 9. Section 44537.5 of the Health and Safety Code is amended to read:

44537.5. The authority shall provide the maximum opportunity for the use of the authority's financing by individuals, businesses engaged in agricultural operations, and small businesses or corporations by providing information, assistance, and coordination to facilitate financing for small projects and other financing that benefits the environment and the economy of the state, including financing for projects for the disposal of agricultural wastes, with special attention to the needs of businesses that do not meet standard commercial lending

requirements but provide public benefits, such as job creation or retention and the redevelopment for economically beneficial uses of contaminated properties. The authority shall assist with the financing of the costs of, among other things, assessment, remedial planning and reporting, technical assistance, and cleanup, remediation, or development of brownfield sites, and any other similar or related costs, by providing the loans authorized pursuant to subdivision (g) of Section 44526. The authority shall provide the maximum opportunity to provide loan funding pursuant to subdivision (g) of Section 44526 to assist brownfield site financing assistance programs where the sites are located in economically struggling communities suffering from a low level of income or a high level of poverty or unemployment.

SEC. 10. Section 44548 of the Health and Safety Code is amended to read:

44548. (a) (1) Subject to any prior contractual obligations to any of its bondholders, the authority may establish one or more small business assistance funds in order to do any of the following:

(A) Assist small businesses to achieve financing of pollution control facilities.

(B) Assist with the financing of the costs of, among other things, assessment, remedial planning and reporting, technical assistance, cleanup, remediation, and development of brownfield sites, and with other similar or related costs, by providing loans pursuant to subdivision (g) of Section 44526.

(C) Fund a capital access program for small businesses pursuant to Article 8 (commencing with Section 44559).

(2) For the purpose of establishing and maintaining small business assistance funds as it determines to be necessary or desirable to secure its bonds or any issuance thereof or for other authorized purposes, the authority, pursuant to its contracts with participating parties, may levy fees or other charges on, or require deposits from, participating parties receiving financing for a project under this division. The total amount of these fees, charges, and deposits with respect to a single issue of bonds shall not exceed 3 percent of the principal amount of that issue of bonds.

(3) Prior to levying any fees or charges or requiring deposits, the authority shall adopt regulations for the operation of the small business assistance funds, the amounts and any payment schedule for the fees, charges, or deposits, eligibility standards for small businesses desiring to use or benefit from the small business assistance funds, and any other matters the authority determines to be necessary for the establishment and maintenance of small business assistance funds. The regulations may provide for differential fees from participating parties based upon the size of a project financed by the authority or other factors determined

to be relevant by the authority, and the regulations may restrict any benefits to those eligible small businesses specified in the regulations.

(4) The authority may transfer any funds available to it or set aside for its administrative expenses to any small business assistance fund established under this section.

(b) The forms of financial assistance that the authority may provide under this section include, but are not limited to, payments to reduce, but not eliminate, the interest rate on loans; payments of part or all of the cost of acquiring letters of credit, insurance, guarantees, or other forms of credit support; and payment of part or all of the authority's expenses in issuing revenue bonds or providing other assistance. The authority may also pledge any small business assistance fund, on an individual or pooled basis, to repay, directly or indirectly, the principal of, or interest or premium on, any issue of bonds of the authority or any loan made or acquired pursuant to this section. The authority may also use moneys in a small business assistance fund to assist in the financing of the costs of assessment, remedial planning and reporting, technical assistance, cleanup, remediation or development of brownfield sites, and of other similar or related costs, by providing loans, pursuant to, and under the terms permitted by, subdivision (g) of Section 44526. In addition to other purposes set forth in this section, the authority may use moneys in a small business assistance fund to make or acquire loans or guarantee commercial loans to participating parties eligible for assistance from those funds. Any moneys repaid or returned to the authority in connection with or as a result of any loan or financial assistance made pursuant to this section shall be deposited in the small business assistance fund from which the loan or assistance was originally provided. The authority may contract with qualified financial institutions, including, but not limited to, banks, investment and mortgage bankers, insurance companies, sureties, and guarantors, to provide any necessary assistance in the granting of credit for these purposes.

(c) Each small business assistance fund established pursuant to this section shall be deposited in a special account that the Controller shall create. Notwithstanding any other provision of law, and subject to any requirements of federal tax law or regulations relative to maintaining the tax-exempt status of the obligations of the authority, all interest or other gains earned by investment or deposit of money in the special account pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code or pursuant to any other provision of law shall be credited to, and deposited in, the account.

(d) In carrying out this section, the authority shall participate with the air pollution control districts and air quality management districts in providing financial assistance in its lending programs.

SEC. 11. Section 44559 of the Health and Safety Code is amended to read:

44559. (a) The Legislature finds and declares that small businesses are responsible for a significant amount of environmental emissions in the state, but are less able than larger businesses to afford the investment in new equipment or process modifications needed to comply with environmental regulations, with regard to controlling emissions, preventing the creation of pollutants, contaminants, or waste products, and remediating contamination of properties with a reasonable potential for economically beneficial reuse. Additionally, small businesses faced with financial pressures will be likely to reduce expenditures to achieve environmental compliance. Better access to capital will allow small businesses to more easily comply with environmental mandates, and to remediate contamination of properties with a reasonable potential of economically beneficial reuse, and to succeed economically, generating additional revenue to state and local governments that can be used for environmental improvements, all to the benefit of all the residents of the state.

(b) The Legislature also finds and declares that it is in the best interest of the state to expand the Capital Access Loan Program for small business regardless of whether the operations of the small business affect the environment, and to permit business loans to be included in the program for small businesses whose operations do not, necessarily, affect the environment. Small businesses have difficulty gaining access to capital for startup and expansion purposes. Small businesses owned by minorities and women have special capital access difficulties. In addition, small businesses operating in areas affected by military base closures are disadvantaged by limited access to capital. The Legislature finds that improving access to capital for these small businesses will spur investment, create jobs, expand economic opportunities, assist in the recovery of communities affected by defense and aerospace losses, assist in the recovery of neighborhoods and communities affected by contaminated properties that are not being used for economically beneficial purposes but which could be so used if the contamination was remediated, and help sustain and strengthen economic recovery in California.

SEC. 12. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise:

(a) ''Authority'' means the California Pollution Control Financing Authority.

(b) ''California Capital Access Fund'' means a fund created within the authority to be used for purposes of the program.

(c) ''Executive director'' means the Executive Director of the California Pollution Control Financing Authority.

(d) ''Financial institution'' means a federal or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(e) ''Loss reserve account'' means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) ''Participating financial institution'' means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) ''Passive real estate ownership'' means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) ''Program'' means the Capital Access Loan Program created pursuant to this article.

(i) ''Qualified business'' means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) ''Qualified loan'' means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) ''Qualified loan'' does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) ''Severely affected community'' means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(*l*) ''Small Business Assistance Fund'' means a fund created within the authority pursuant to Section 44548.

(m) ''Small business concern'' has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 12.5. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise:

(a) ''Authority'' means the California Pollution Control Financing Authority.

(b) ''California Capital Access Fund'' means a fund created within the authority to be used for purposes of the program.

(c) ''Executive director'' means the Executive Director of the California Pollution Control Financing Authority.

(d) ''Financial institution'' means a federal- or state-chartered bank, savings association, credit union, not-for-profit community

development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent. ''Financial institution'' also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations. A financial institution described in this subdivision shall be domiciled or have its principal office in the State of California.

(e) ''Loss reserve account'' means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) ''Participating financial institution'' means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) ''Passive real estate ownership'' means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) ''Program'' means the Capital Access Loan Program created pursuant to this article.

(i) ''Qualified business'' means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) ''Qualified loan'' means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) ''Qualified loan'' does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) ''Severely affected community'' means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(*l*) ''Small Business Assistance Fund'' means a fund created within the authority pursuant to Section 44548.

(m) ''Small business concern'' has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 13. Section 44559.2 of the Health and Safety Code is amended to read:

44559.2. (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to

participate in the Capital Access Loan Program established by this article.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete Standard Industrial Classification (SIC) code for the qualified business and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) Other terms that the authority may require for purposes of this article.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code) may participate in the Capital Access Loan Program established pursuant to this article only to the extent

participation is in compliance with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Financial Institutions to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

SEC. 14. Section 1.5 of this bill incorporates amendments to Section 44501 of the Health and Safety Code proposed by both this bill and AB 779. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 44501 of the Health and Safety Code, and (3) this bill is enacted after AB 779, in which case Section 1 of this bill shall not become operative.

SEC. 15. Section 2.5 of this bill incorporates amendments to Section 44502 of the Health and Safety Code proposed by both this bill and AB 779. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 44502 of the Health and Safety Code, and (3) this bill is enacted after AB 779, in which case Section 2 of this bill shall not become operative.

SEC. 16. Section 5.5 of this bill incorporates amendments to Section 44520 of the Health and Safety Code proposed by both this bill and AB 779. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 44520 of the Health and Safety Code, and (3) this bill is enacted after AB 779, in which case Section 5 of this bill shall not become operative.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 44526 of the Health and Safety Code proposed by both this bill and AB 779. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 44526 of the Health and Safety Code, and (3) this bill is enacted after AB 779, in which case Section 8 of this bill shall not become operative.

SEC. 18. Section 12.5 of this bill incorporates amendments to Section 44559.1 of the Health and Safety Code proposed by both this bill and AB 2805. 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 44559.1 of the Health and Safety Code, and (3) this bill is

enacted after AB 2805, in which case Section 12 of this bill shall not become operative.

CHAPTER 916

An act to amend Sections 11164, 11165.5, 11165.7, 11165.12, 11165.13, 11165.14, 11166, 11166.1, 11166.2, 11166.3, 11166.5, 11166.7, 11166.8, 11166.9, 11167, 11167.5, 11168, 11169, 11170, 11171, 11171.5, 11172, 11174.1, and 11174.3 of, and to repeal Sections 11165.8, 11165.10, 11165.15, 11165.16, and 11165.17 of, and to repeal and add Sections 11165.6 and 11165.9 of, the Penal Code, relating to child abuse reporting.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 11164 of the Penal Code is amended to read:

11164. (a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act.

(b) The intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

SEC. 2. Section 11165.5 of the Penal Code is amended to read:

11165.5. As used in this article, the term ''abuse or neglect in out-of-home care'' includes sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful cruelty or unjustifiable punishment of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. ''Abuse or neglect in out-of-home care'' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 3. Section 11165.6 of the Penal Code is repealed.

SEC. 4. Section 11165.6 is added to the Penal Code, to read:

11165.6. As used in this article, ''child abuse'' means a physical injury that is inflicted by other than accidental means on a child by

another person. The term ''child abuse or neglect'' includes sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, unlawful corporal punishment or injury as defined in Section 11165.4, and abuse or neglect in out-of-home care as defined in Section 11165.5. ''Child abuse or neglect'' does not include a mutual affray between minors. ''Child abuse or neglect'' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

SEC. 5. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, ''mandated reporter'' is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A headstart teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an

attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for voluntary firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, ''commercial film and photographic print processor'' means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, ''child visitation monitor'' means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) ''Animal control officer'' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) ''Humane society officer'' means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, ''clergy member'' means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train the employees specified in subdivision (a) in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

SEC. 6. Section 11165.8 of the Penal Code is repealed.

SEC. 7. Section 11165.9 of the Penal Code is repealed.

SEC. 8. Section 11165.9 is added to the Penal Code, to read:

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referral by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

SEC. 9. Section 11165.10 of the Penal Code is repealed.

SEC. 10. Section 11165.12 of the Penal Code is amended to read:

11165.12. As used in this article, the following definitions shall control:

(a) ''Unfounded report'' means a report which is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) ''Substantiated report'' means a report which is determined by the investigator who conducted the investigation, based upon some credible evidence, to constitute child abuse or neglect, as defined in Section 11165.6.

(c) ''Inconclusive report'' means a report which is determined by the investigator who conducted the investigation not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

SEC. 11. Section 11165.13 of the Penal Code is amended to read:

11165.13. For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

SEC. 12. Section 11165.14 of the Penal Code is amended to read:

11165.14. The appropriate local law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing board of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

SEC. 13. Section 11165.15 of the Penal Code is repealed.

SEC. 14. Section 11165.16 of the Penal Code is repealed.

SEC. 15. Section 11165.17 of the Penal Code is repealed.

SEC. 16. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or

within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

(1) For the purposes of this article, ''reasonable suspicion'' means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, ''penitential communication'' means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(d) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the

law enforcement agency having jurisdiction over the case immediately, or as soon as practically possible, by telephone, and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, ''sexual conduct'' means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(e) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(f) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(g) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, co-worker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(h) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronically transmit to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the

district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. For the purposes of this subdivision, a fax or electronic transmission shall be deemed to be a written report.

(i) A law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 17. Section 11166.1 of the Penal Code is amended to read:

11166.1. (a) When an agency receives a report pursuant to Section 11166 that contains either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of an agency specified in Section 11165.9 who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with Section 11166. The agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the agency within 30 days of the request.

SEC. 18. Section 11166.2 of the Penal Code is amended to read:

11166.2. In addition to the reports required under Section 11166, any agency specified in Section 11165.9 shall immediately or as soon as practically possible report by telephone to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

SEC. 19. Section 11166.3 of the Penal Code is amended to read:

11166.3. (a) The Legislature intends that in each county the law enforcement agencies and the county welfare or probation department shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. The county welfare department or probation department shall, in cases where a minor is a victim of actions specified in Section 288 of this code and a petition has been filed pursuant to Section 300 of the Welfare and Institutions Code with regard to the minor, evaluate what action or actions would be in the best interest of the child victim. Notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made

accessible to the defendant or his or her counsel in the manner specified in Section 859.

(b) The local law enforcement agency having jurisdiction over a case reported under Section 11166 shall report to the district office of the State Department of Social Services any case reported under this section if the case involves a facility specified in paragraph (5) or (6) of Section 1502 or in Section 1596.750 or 1596.76 of the Health and Safety Code and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency.

SEC. 20. Section 11166.5 of the Penal Code is amended to read:

11166.5. (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.

On and after January 1, 1993, any person who acts as a child visitation monitor, as defined in Section 11165.15, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions.

The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166.

The signed statements shall be retained by the employer or the court, as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.

This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

(b) On and after January 1, 1986, when a person is issued a state license or certificate to engage in a profession or occupation, the members of which are required to make a report pursuant to Section 11166, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person. In addition to the requirements

contained in subdivision (a), the statement also shall indicate that failure to comply with the requirements of Section 11166 is a misdemeanor, punishable by up to six months in a county jail, by a fine of one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) As an alternative to the procedure required by subdivision (b), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1986.

(d) On and after January 1, 1993, any child visitation monitor, as defined in Section 11165.15, who desires to act in that capacity shall have received training in the duties imposed by this article, including training in child abuse identification and child abuse reporting. The person, prior to engaging in monitoring the first visit in a case, shall sign a statement on a form provided to him or her by the court which ordered the presence of that third person during the visit, to the effect that he or she has received this training. This statement may be included in the statement required by subdivision (a) or it may be a separate statement. This statement shall be filed, along with the statement required by subdivision (a), in the court file of the case for which the visitation monitoring is being provided.

SEC. 21. Section 11166.7 of the Penal Code is amended to read:

11166.7. (a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death.

(c) In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.
(4) Criminologists.
(5) District attorneys.
(6) Child protective services staff.
(7) Law enforcement personnel.
(8) Representatives of local agencies which are involved with child abuse or neglect reporting.
(9) County health department staff who deals with children's health issues.
(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

SEC. 22. Section 11166.8 of the Penal Code is amended to read:

11166.8. Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases so that incidents of child abuse or neglect are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

SEC. 23. Section 11166.9 of the Penal Code is amended to read:

11166.9. (a) (1) The purpose of this section shall be to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.

(2) It is the intent of the Legislature that the California State Child Death Review Council, the Department of Justice, the State Department of Social Services, the State Department of Health Services, and state and local child death review teams shall share data and other information necessary from the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics and the Department of Social Services Child Welfare Services/Case Management System files to establish accurate information on the nature and extent of child abuse or neglect related fatalities in California as those documents relate to child fatality cases. Further, it is the intent of the Legislature to ensure that records of child abuse or neglect related fatalities are entered into the State Department of Social Services, Child Welfare Services/Case Management System. It is also the intent that training and technical assistance be provided to child death review teams and professionals in the child protection system regarding multiagency case review.

(b) (1) It shall be the duty of the California State Child Death Review Council to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse or neglect and to create a body of information to prevent child deaths. The Department of Justice, the State Department of Social Services, the State Department of Health Services, the California Coroner's Association, the County Welfare Directors Association, Prevent Child Abuse California, the California Homicide Investigators Association, the Office of Criminal Justice Planning, the Inter-Agency Council on Child Abuse and Neglect/National Center on Child Fatality Review, the California Conference of Local Health Officers, the California Conference of Local Directors of Maternal, Child, and Adolescent Health, the California Conference of Local Health Department Nursing Directors, the California District Attorneys Association, and at least three regional representatives, chosen by the other members of the council, working collaboratively for the purposes of this section, shall be known as the California State Child Death Review Council. The council shall select a chairperson or cochairpersons from the members.

(2) The Department of Justice is hereby authorized to carry out the purposes of this section by coordinating council activities and working collaboratively with the agencies and organizations in paragraph (1), and may consult with other representatives of other agencies and private organizations, to help accomplish the purpose of this section.

(c) Meetings of the agencies and organizations involved shall be convened by a representative of the Department of Justice. All meetings convened between the Department of Justice and any organizations required to carry out the purpose of this section shall take place in this state. There shall be a minimum of four meetings per calendar year.

(d) To accomplish the purpose of this section, the Department of Justice and agencies and organizations involved shall engage in the following activities:

(1) Analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to public officials in the state who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year.

The state data shall include the Department of Justice Child Abuse Central Index and Supplemental Homicide File, the State Department of Health Services Vital Statistics, and the State Department of Social Services Child Welfare Services/Case Management System.

(2) In conjunction with the Office of Criminal Justice Planning, coordinate statewide and local training for county death review teams and the members of the teams, including, but not limited to, training in the application of the interagency child death investigation protocols and procedures established under Sections 11166.7 and 11166.8 to identify child deaths associated with abuse.

(e) The State Department of Health Services, in collaboration with the California State Child Death Review Council, shall design, test and implement a statewide child abuse or neglect fatality tracking system incorporating information collected by local child death review teams. The department shall:

(1) Establish a minimum case selection criteria and review protocols of local child death review teams.

(2) Develop a standard child death review form with a minimum core set of data elements to be used by local child death review teams, and collect and analyze that data.

(3) Establish procedural safeguards in order to maintain appropriate confidentiality and integrity of the data.

(4) Conduct annual reviews to reconcile data reported to the State Department of Health Services Vital Statistics, Department of Justice Homicide Files and Child Abuse Central Index, and the State Department of Social Services Child Welfare Services/Case Management System data systems, with data provided from local child death review teams.

(5) Provide technical assistance to local child death review teams in implementing and maintaining the tracking system.

(6) This subdivision shall become operative on July 1, 2000, and shall be implemented only to the extent that funds are appropriated for its purposes in the Budget Act.

(f) Local child death review teams shall participate in a statewide child abuse or neglect fatalities monitoring system by:

(1) Meeting the minimum standard protocols set forth by the State Department of Health Services in collaboration with the California State Child Death Review Council.

(2) Using the standard data form to submit information on child abuse or neglect fatalities in a timely manner established by the State Department of Health Services.

(g) The California State Child Death Review Council shall monitor the implementation of the monitoring system and incorporate the results and findings of the system and review into an annual report.

(h) The Department of Justice shall direct the creation, maintenance, updating, and distribution electronically and by paper, of a statewide child death review team directory, which shall contain the names of the members of the agencies and private organizations participating under

this section, and the members of local child death review teams and local liaisons to those teams. The department shall work in collaboration with members of the California State Child Death Review Council to develop a directory of professional experts, resources, and information from relevant agencies and organizations and local child death review teams, and to facilitate regional working relationships among teams. The Department of Justice shall maintain and update these directories annually.

(i) The agencies or private organizations participating under this section shall participate without reimbursement from the state. Costs incurred by participants for travel or per diem shall be borne by the participant agency or organization. The participants shall be responsible for collecting and compiling information to be included in the annual report. The Department of Justice shall be responsible for printing and distributing the annual report using available funds and existing resources.

(j) The Office of Criminal Justice Planning, in coordination with the State Department of Social Services, the Department of Justice, and the California State Child Death Review Council shall contract with state or nationally recognized organizations in the area of child death review to conduct statewide training and technical assistance for local child death review teams and relevant organizations, develop standardized definitions for fatal child abuse or neglect, develop protocols for the investigation of fatal child abuse, and address relevant issues such as grief and mourning, data collection, training for medical personnel in the identification of child abuse fatalities, domestic violence fatality review, and other related topics and programs. The provisions of this subdivision shall only be implemented to the extent that the Office of Criminal Justice Planning can absorb the costs of implementation within its current funding, or to the extent that funds are appropriated for its purposes in the Budget Act.

(k) Law enforcement and child welfare agencies shall cross-report all cases of child death suspected to be related to child abuse or neglect whether or not the deceased child has any known surviving siblings.

(*l*) County child welfare agencies shall create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect, whether or not the deceased child has any known surviving siblings. Upon notification that the death was determined not to be related to child abuse or neglect, the child welfare agency shall enter that information into the Child Welfare Services/Case Management System.

SEC. 24. Section 11167 of the Penal Code is amended to read:

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 shall include, if known, the name, business address, and

telephone number of the mandated reporter, and the capacity that makes the person a mandated reporter; the child's name and address, present location, and, where applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect may also be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or district attorney in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Persons who may report pursuant to subdivision (f) of Section 11166 are not required to include their names.

SEC. 25. Section 11167.5 of the Penal Code is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.

(3) Persons or agencies with whom investigations of child abuse or neglect are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse or neglect by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, ''hospital scan team'' means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse or neglect. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse or neglect. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to subdivision (c) of Section 11170. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim in order to maintain confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an investigation of child abuse or neglect only when an agency makes the request for reports of suspected child abuse or neglect in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (1) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (2) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(13) Persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided by subdivision (e) of Section 11170. Disclosure under this section shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Nothing in this section prohibits a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim to maintain confidentiality as required by law.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in Section 11165.8, pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

SEC. 26. Section 11168 of the Penal Code is amended to read:

11168. The written reports required by Section 11166 shall be submitted on forms adopted by the Department of Justice after consultation with representatives of the various professional medical associations and hospital associations and county probation or welfare departments. Those forms shall be distributed by the agencies specified in Section 11165.9.

SEC. 27. Section 11169 of the Penal Code is amended to read:

11169. (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However,

nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

SEC. 28. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information

regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(4) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(5) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(6) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or an agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information

maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(7) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data

Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to Section 11169 to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (13) of subdivision (a) of Section 11167.5.

(f) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 29. Section 11171 of the Penal Code is amended to read:

11171. (a) A physician and surgeon or dentist or their agents and by their direction may take skeletal X-rays of the child without the consent of the child's parent or guardian, but only for purposes of diagnosing the case as one of possible child abuse or neglect and determining the extent of the child abuse or neglect.

(b) Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this article in any court proceeding or administrative hearing.

SEC. 30. Section 11171.5 of the Penal Code is amended to read:

11171.5. (a) If a peace officer, in the course of an investigation of child abuse or neglect, has reasonable cause to believe that the child has been the victim of physical abuse, the officer may apply to a magistrate for an order directing that the victim be X-rayed without parental consent.

Any X-ray taken pursuant to this subdivision shall be administered by a physician and surgeon or dentist or their agents.

(b) With respect to the cost of an X-ray taken by the county coroner or at the request of the county coroner in suspected child abuse or neglect cases, the county may charge the parent or legal guardian of the child-victim the costs incurred by the county for the X-ray.

(c) No person who administers an X-ray pursuant to this section shall be entitled to reimbursement from the county for any administrative cost that exceeds 5 percent of the cost of the X-ray.

SEC. 31. Section 11172 of the Penal Code is amended to read:

11172. (a) No mandated reporter who reports a known or suspected instance of child abuse or neglect shall be civilly or criminally liable for any report required or authorized by this article. Any other person

reporting a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any person who makes a report of child abuse or neglect known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused. No person required to make a report pursuant to this article, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that even though it has provided immunity from liability to persons required to report child abuse or neglect, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of child abuse or neglect. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a mandated reporter may present a claim to the State Board of Control for reasonable attorney's fees and costs incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General of the State of California at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) A court may award attorney's fees and costs to a commercial film and photographic print processor when a suit is brought against the

processor because of a disclosure mandated by this article and the court finds this suit to be frivolous.

SEC. 32. Section 11174.1 of the Penal Code is amended to read:

11174.1. (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations and guidelines.

(b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:

(1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.

(2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse or neglect, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.

(c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse or neglect, as defined in Section 11165.6.

SEC. 33. Section 11174.3 of the Penal Code is amended to read:

11174.3. (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

SEC. 34. This act is not intended to abrogate the case of Alejo v. City of Alhambra (1999) 75 Cal.App.4th 1180.

SEC. 35. 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 917

An act to amend Sections 1684, 1684.5, 1687, 1698, and 1698.1 of, and to add Sections 1682.8 and 1695.55 to, the Labor Code, relating to farm labor contractors.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1682.8 is added to the Labor Code, to read:

1682.8. The Labor Commissioner may establish and maintain a Farm Labor Contractor Special Enforcement Unit within the Division of Labor Standards Enforcement office in Fresno of the Department of Industrial Relations for the hiring of additional agents to enforce the provisions of this chapter by revoking, suspending, or refusing to renew farm labor contractors' licenses pursuant to Section 1690.

SEC. 2. Section 1684 of the Labor Code is amended to read:

1684. The Labor Commissioner shall not issue to any person a license to act as a farm labor contractor, nor shall the Labor Commissioner renew that license, until all of the following conditions are satisfied:

(a) The person has executed a written application therefor in a form prescribed by the Labor Commissioner, subscribed and sworn to by the person, and containing all of the following:

(1) A statement by the person of all facts required by the Labor Commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the person proposes to conduct operations as a farm labor contractor if the license is issued.

(2) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the proposed operation as a farm labor contractor, together with the amount of their respective interests.

(3) A declaration consenting to the designation by a court of the Labor Commissioner as an agent available to accept service of summons in any action against the licensee if the licensee has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

(b) The Labor Commissioner, after investigation, is satisfied as to the character, competency, and responsibility of the person.

(c) The person has deposited with the Labor Commissioner a surety bond in an amount based on the size of the person's annual payroll for all employees, as follows:

(1) For payrolls up to five hundred thousand dollars ($500,000), a twenty-five thousand dollar ($25,000) bond.

(2) For payrolls of five hundred thousand dollars ($500,000) to two million dollars ($2,000,000), a fifty thousand dollar ($50,000) bond.

(3) For payrolls greater than two million dollars ($2,000,000), a seventy-five thousand dollar ($75,000) bond.

Where the contractor has been the subject of a final judgment in a year in an amount equal to that of the bond required, he or she shall be required to deposit an additional bond within 60 days. The bond shall be

payable to the people of the State of California and shall be conditioned that the farm labor contractor will comply with all the terms and provisions of this chapter and will pay all damages occasioned to any person by failure to do so, or by any violation of this chapter, or false statements or misrepresentations made in the procurement of the license. The bond shall also be payable for interest on wages and for any damages arising from violation of orders of the Industrial Welfare Commission, but shall not be payable for penalties on nonpayment or late payment of wages pursuant to Section 203.

(d) The person has paid to the Labor Commissioner a license fee of five hundred dollars ($500) plus a filing fee of ten dollars ($10). However, where a timely application for renewal is filed, the ten dollar ($10) filing fee is not required. The Labor Commissioner shall deposit fifty dollars ($50) of each licensee's annual license fee into the Farmworker Remedial Account. Funds from this account shall be disbursed by the Labor Commissioner only to persons determined by the Labor Commissioner to have been damaged by any licensee when the damage exceeds the limits of the licensee's bond, or to persons determined by the Labor Commissioner to have been damaged by an unlicensed farm labor contractor. In making these determinations, the Labor Commissioner shall disburse funds from the Farmworker Remedial Account to satisfy claims against farm labor contractors or unlicensed farm labor contractors, which shall also include interest on wages and any damages arising from the violation of orders of the Industrial Welfare Commission, but shall not include penalties on nonpayment or late payment of wages pursuant to Section 203. The Labor Commissioner may disburse funds from the Farmworker Remedial Account to farm labor contractors, for payment of farmworkers, where a contractor is unable to pay farmworkers due to the failure of a grower or packer to pay the contractor. Any disbursed funds subsequently recovered by the Labor Commissioner pursuant to Section 1693, or otherwise, shall be returned to the Farmworker Remedial Account.

(e) The person has taken a written examination that demonstrates an essential degree of knowledge of the current laws and administrative regulations concerning farm labor contractors as the Labor Commissioner deems necessary for the safety and protection of farmers, farmworkers, and the public. To successfully complete the examinations, the person must correctly answer at least 85 percent of the questions posed. The examination period shall not exceed four hours. The examination may only be taken a maximum of three times in a calendar year. The examinations shall include a demonstration of knowledge of the current laws and regulations regarding wages, hours, and working conditions, penalties, employee housing and

transportation, collective bargaining, field sanitation, and safe work practices related to pesticide use, including all of the following subjects:

(1) Field reentry regulations.

(2) Worker pesticide safety training.

(3) Employer responsibility for safe working conditions.

(4) Symptoms and appropriate treatment of pesticide poisoning.

(f) (1) The Labor Commissioner shall consult with the Director of Pesticide Regulation, the Department of the California Highway Patrol, the Department of Housing and Community Development, the Employment Development Department, the Department of Food and Agriculture, the Department of Motor Vehicles, and the Division of Occupational Safety and Health in preparing the examination required by subdivision (e) and the appropriate educational materials pertaining to the matters included in the examination, and may charge a fee of not more than one hundred dollars ($100) to cover the cost of administration of the examination.

(2) In addition, the person must enroll and participate in at least eight hours of relevant, educational classes each year. The classes shall be chosen from a list of approved classes prepared by the Labor Commissioner, in consultation with the persons and entities listed in paragraph (1) and county agricultural commissioners.

(g) The Labor Commissioner may renew a license without requiring the applicant for renewal to take the examination specified in subdivision (e) if the Labor Commissioner finds that the applicant meets all of the following criteria:

(1) Has satisfactorily completed the examination during the immediately preceding two years.

(2) Has not during the preceding year been found to be in violation of any applicable laws or regulations including, but not limited to, Division 7 (commencing with Section 12501) of the Food and Agricultural Code Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code, Division 2 (commencing with Section 200), Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300) of this code, and Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code.

(3) Has, for each year since the license was obtained, enrolled and participated in at least eight hours of relevant, educational classes, chosen from a list of approved classes prepared by the Labor Commissioner.

(4) Has complied with all other requirements of this section.

(h) The person has registered as a farm labor contractor pursuant to the federal Migrant and Seasonal Agricultural Worker Protection Act, when registration is required pursuant to federal law.

SEC. 3. Section 1684.5 of the Labor Code is amended to read:

1684.5. The Labor Commissioner shall quarterly submit to the Department of the California Highway Patrol a list of all licensees.

SEC. 4. Section 1687 of the Labor Code is amended to read:

1687. (a) Each laminated license shall contain, on the face thereof, all of the following:

(1) The name and address of the licensee and the fact that the licensee is licensed to act as a farm labor contractor for the period upon the face of the license only.

(2) The number, date of issuance, and date of expiration of the license.

(3) The amount of the surety bond deposited by the licensee.

(4) The fact that the license may not be transferred or assigned.

(5) A picture of the licensee taken at the time of application.

(b) The license shall be similar in size and format to a driver's license issued by the Department of Motor Vehicles, and shall contain a hologram and a signature to verify authenticity. The cost of the hologrammed license shall be appropriated from the license fee.

(c) The license shall contain on the back thereof the definition of a farm labor contractor, as defined by subdivision (b) of Section 1682.

SEC. 5. Section 1695.55 is added to the Labor Code, to read:

1695.55. (a) Every person acting in the capacity of a farm labor contractor shall provide any grower with whom he or she has contracted to supply farmworkers a payroll record for each farmworker providing labor under the contract. The payroll record shall include a disclosure of the wages and hours worked for each farmworker.

(b) Each grower entering into a contract with a farm labor contractor shall retain a copy of the payroll record provided by the contractor for the duration of the contract.

SEC. 6. Section 1698 of the Labor Code is amended to read:

1698. All moneys collected for fines collected for violations of the provisions of this chapter shall be paid into the Farmworker Remedial Account and shall be available, upon appropriation, for purposes of this chapter. Except as provided in Section 1684, all moneys collected for licenses issued pursuant to this chapter shall be paid into the State Treasury and credited to the General Fund.

SEC. 7. Section 1698.1 of the Labor Code is amended to read:

1698.1. No licensee shall sell, transfer or give away any interest in or the right to participate in the profits of said licensee's business without the written consent of the Labor Commissioner. A violation of this section shall constitute a misdemeanor, and shall be punishable by a fine of not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisonment for not more than 60 days, or both.

CHAPTER 918

An act to amend Sections 10290, 10290.1, 10301, 10302, 10306, 12100, and 12101.5 of, to repeal Sections 10324 and 12110 of, and to repeal and add Section 10298 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 10290 of the Public Contract Code is amended to read:

10290. As used in this chapter:

(a) ''Department'' means the Department of General Services.

(b) ''Director'' means the Director of General Services.

(c) ''Centralized purchasing'' means the purchase for state agencies of materials, supplies, and equipment by the Office of Procurement.

(d) ''Goods'' means all types of tangible personal property, including materials, supplies, and equipment.

(e) ''Office'' means the Office of Procurement in the Department of General Services.

(f) ''Price schedule'' means an agreement between the Office of Procurement and a supplier under which the supplier agrees to accept orders from the office or a state agency for specified goods at set prices for a specified period of time but which does not obligate the office or state agencies to contract for the specified goods from the supplier.

(g) ''Regional contract'' means a contract of the same type as a statewide contract but applicable only to specified contracting in a particular area or region of the state.

(h) ''Statewide contract'' means a contract awarded by the Office of Procurement to one or more suppliers for the acquisition of specified goods for a period of time, at a price, and in an amount set forth in the contract.

(i) ''Multiple award'' means a contract of indefinite quantity for one or more similar goods, information technology, or services to more than one supplier.

(j) ''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, or services.

SEC. 2. Section 10290.1 of the Public Contract Code is amended to read:

10290.1. (a) Notwithstanding any other provision of law, in exercising their delegation of contracting authority from the department, state agencies may contract for goods, information technology, or services with suppliers who have multiple award schedules with the General Services Administration of the United States if the supplier is willing to extend those terms, conditions, and prices. The department may also develop multiple award schedules or agreements for use by state agencies in the same manner.

(b) The department shall determine the delegation contracting authority for agencies wishing to contract with suppliers who have multiple award schedules. The department shall seek input from both customer departments and agencies and private sector suppliers.

SEC. 3. Section 10298 of the Public Contract Code is repealed.

SEC. 4. Section 10298 is added to the Public Contract Code, to read:

10298. (a) The director may consolidate the needs of multiple state agencies for goods, information technology, and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State and local agencies may contract with suppliers awarded those contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed to, to any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of goods, information technology, or services for assisting the agency in acquisitions conducted pursuant to Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). The state shall not incur financial responsibility in connection with contracting for local agencies under this section.

SEC. 5. Section 10301 of the Public Contract Code is amended to read:

10301. Except in cases when the agency and the department agree that an article of a specified brand or trade name is the only article that will properly meet the needs of the agency, or in cases where the State Board of Control has made a determination pursuant to Section 10308, all contracts for the acquisition or lease of goods in an amount of twenty-five thousand dollars ($25,000), or a higher amount as

established by the director, shall be made or entered into with the lowest responsible bidder meeting specifications.

For purposes of determining the lowest bid, the amount of sales tax shall be excluded from the total amount of the bid.

SEC. 6. Section 10302 of the Public Contract Code is amended to read:

10302. Except in cases of emergency where immediate purchase of goods without bid is necessary for the protection of the public health, welfare, or safety, whenever the department contracts for goods in excess of twenty-five thousand dollars ($25,000), or a higher amount as established by the director, the department shall advertise in the California State Contracts Register the availability of its solicitation, and interested suppliers, upon request, shall be furnished with copies of the solicitation. In addition to advertising in the California State Contracts Register, the department shall post in a public place a copy of the solicitation, which shall remain posted until seven days after an award has been made. Whenever a contract in excess of twenty-five thousand dollars ($25,000), or a higher amount as established by the director, is made under this section or Section 10301 without the taking of bids, the department shall prepare a written document stating the fact of the contract together with the facts requiring the contract of the goods without the taking of bids. This document shall be maintained by the department and shall be available as a public record.

SEC. 7. Section 10306 of the Public Contract Code is amended to read:

10306. Whenever a contract or purchase order under this article is not to be awarded to the lowest bidder, the bidder shall be notified 24 hours prior to awarding the contract or purchase order to another bidder. Upon written request by any bidder who has submitted a bid, notice of the proposed award shall be posted in a public place in the offices of the department at least 24 hours prior to awarding the contract or purchase order. If prior to making the award, any bidder who has submitted a bid files a protest with the department against the awarding of the contract or purchase order on the ground that he or she is the lowest responsible bidder meeting specifications, the contract or purchase order 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 relative to the protest. In computing the 24-hour periods provided for in this section, Saturdays, Sundays, and legal holidays shall be excluded.

Within 10 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 ground of the protest and the facts in support thereof.

SEC. 8. Section 10324 of the Public Contract Code is repealed.

SEC. 9. Section 12100 of the Public Contract Code is amended to read:

12100. The Legislature finds that the unique aspects of information technology, as defined in Section 11702 of the Government Code, and its importance to state programs warrant a separate acquisition authority. The Legislature further finds that this separate authority should enable the timely acquisition of information technology goods and services in order to meet the state's needs in the most value-effective manner.

All contracts for the acquisition of information technology goods or services, whether by lease or purchase, shall be made by or under the supervision of the Department of General Services.

SEC. 10. Section 12101.5 of the Public Contract Code is amended to read:

12101.5. (a) It is the intent of the Legislature that agencies of the State of California use an acquisition method that is compatible with their short- and long-term fiscal needs in contracts relating to commodities and information technology goods and services. State agencies should be able to specify their anticipated life cycle requirements that would become one of the criteria for contractor selection. These agencies should be given the choice of suppliers to meet statewide standardization needs, unique service requirements, application requirements, and long-term satisfaction criteria. There is a need for the State of California to enter into long-term contracts with annual cancellation and fund-out clauses, as required, to protect the state's interests as well as provide the option for multiyear renewals to encourage suppliers to develop higher levels of service and support throughout the contracts.

(b) The state may utilize multiple awards, including federal General Service Administration Multiple Awards Schedules and master agreements or contracts for goods, information technology, services, or consulting services. For purposes of this subdivision, a multiple award is an award of an indefinite quantity contract for one or more similar goods, information technology, or services to more than one supplier. Except for possible multiple awards as permitted by this subdivision, all the requirements of this chapter pertaining to other types of information technology acquisitions shall be followed. The department shall ensure that multiple award schedules are in compliance with all other applicable statutes.

(c) Notwithstanding any other provision of law, state agencies, in exercising their contracting authority delegated by the department, may contract with suppliers who have multiple award schedules with the General Services Administration of the United States on the same terms, conditions, and prices if the supplier is willing to do so. The department may also develop multiple award schedules or agreements for use by

state agencies in the same manner. The department shall determine the delegation contracting authority for agencies wishing to use multiple award schedules.

SEC. 11. Section 12110 of the Public Contract Code is repealed.

CHAPTER 919

An act to amend Section 12022.7 of the Penal Code, relating to sentencing.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 12022.7 of the Penal Code is amended to read:

12022.7. (a) A person who personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(b) A person found to have inflicted great bodily injury pursuant to subdivision (a) which causes the victim to become comatose due to brain injury or to suffer paralysis, as defined in Section 12022.9, of a permanent nature, shall be punished by an additional and consecutive term of five years.

(c) A person who personally inflicts great bodily injury on a person who is 70 years of age or older, other than an accomplice, in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of five years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted.

(d) A person who personally inflicts great bodily injury on a child under the age of five years in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of four, five, or six years, unless infliction of great bodily injury is an element of the offense of which he or she is convicted. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation.

The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(e) A person who personally inflicts great bodily injury under circumstances involving domestic violence in the commission or attempted commission of a felony shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three, four, or five years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing. As used in this section, ''domestic violence'' has the meaning provided in subdivision (b) of Section 13700.

(f) As used in this section, ''great bodily injury'' means a significant or substantial physical injury.

(g) This section shall not apply to murder or manslaughter or a violation of Section 451 or 452. The additional term provided in this section shall not be imposed unless the fact of great bodily injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(h) The court shall impose the additional terms of imprisonment under either subdivision (a), (b), (c), or (d), but may not impose more than one of those terms for the same offense.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 920

An act to amend Sections 4850 and 4850.3 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 1.3. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Custody assistants employed on a regular, full-time basis by a county of the first class.

(11) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(12) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government

Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 1.5. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(12) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 1.7. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Custody assistants employed on a regular, full-time basis by a county of the first class.

(11) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(12) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(13) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 2. Section 4850.3 of the Labor Code is amended to read:

4850.3. A city, county, special district, or harbor district that is a member of the Public Employees' Retirement System, is subject to the County Employees Retirement Law of 1937, or is subject to the Los Angeles City Employees' Retirement System, may make advanced disability pension payments to any local safety officer who has qualified for benefits under Section 4850 and is approved for a disability allowance. The payments shall be no less than 50 percent of the estimated highest average annual compensation earnable by the local safety officer during the three consecutive years of employment immediately preceding the effective date of his or her disability retirement, unless the local safety officer chooses an optional settlement in the permanent disability retirement application process which would reduce the pension allowance below 50 percent. In the case where the local safety officer's choice lowers the disability pension allowance below 50 percent of average annual compensation as calculated, the advanced pension payments shall be set at an amount equal to the disability pension allowance. If a local agency has an adopted policy of paying for any accumulated sick leave after the safety officer is eligible for a disability allowance, the advanced disability pension payments under this section may only be made when the local safety officer has exhausted all sick leave payments. Advanced disability pension payments shall not be considered a salary under this or any other provision of law. All advanced disability pension payments made by a local agency with membership in the Public Employees' Retirement System shall be reimbursed by the Public Employees' Retirement System pursuant to Section 21293.1 of the Government Code.

SEC. 3. Section 1.3 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by both this bill and AB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) SB 2081 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after AB 1124, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill and SB 2081. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) AB 1124 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after SB 2081, in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

SEC. 5. Section 1.7 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill, AB 1124, and SB 2081. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 4850 of the Labor Code, and (3) this bill is enacted after AB 1124 and SB 2081, in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative.

CHAPTER 921

An act to amend Section 302 of the Welfare and Institutions Code, relating to child custody.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 302 of the Welfare and Institutions Code is amended to read:

302. (a) A juvenile court may assume jurisdiction over a child described in Section 300 regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court.

(b) Unless their parental rights have been terminated, both parents shall be notified of all proceedings involving the child. In any case where the social worker is required to provide a parent or guardian with notice of a proceeding at which the social worker intends to present a report, the social worker shall also provide both parents, whether custodial or noncustodial, or any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing, either personally or by first-class mail. The social worker shall not charge any fee for providing a copy of a report required by this subdivision. The social worker shall keep confidential the address of any parent who is known to be the victim of domestic violence.

(c) When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, so long as the child remains a dependent of the juvenile court.

(d) (1) Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction pursuant to Section 362.4 regarding a child who has been previously adjudged to be a dependent child of the juvenile court shall be a final judgment and shall remain in effect after that jurisdiction is terminated. The order shall not be modified in a proceeding or action described in Section 3021 of the Family Code unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.

CHAPTER 922

An act to add Sections 276.2 and 276.3 to, and to repeal and add Section 276 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 276 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 276 is added to the Revenue and Taxation Code, to read:

276. (a) Except as otherwise provided by subdivision (b), for property for which the disabled veterans' exemption described in Section 205.5 was available, but for which a timely claim was not filed, a partial exemption shall be applied in accordance with whichever of the following is applicable:

(1) Ninety percent of any tax, including any interest or penalty thereon, levied upon that portion of the assessed value of the property that would have been exempt under a timely and appropriate claim shall be canceled or refunded, provided that an appropriate claim for exemption is filed after 5 p.m. on February 15 of the calendar year in which the fiscal year begins but on or before the following December 10.

(2) If an appropriate claim for exemption is filed after the time period specified in paragraph (1), 85 percent of that portion of any tax, including

any interest or penalty thereon, that was levied upon that portion of the assessed value of the property that would have been exempt under a timely and appropriate claim, shall be canceled or refunded.

(b) If a late-filed claim for the sixty thousand dollar ($60,000) exemption or the one hundred fifty thousand dollar ($150,000) exemption is filed in conjunction with a timely filed claim for the forty thousand dollar ($40,000) or one hundred thousand dollar ($100,000) exemption, the amount of any exemption allowed under the late-filed claim under subdivision (a) shall be determined on the basis of that portion of the exemption amount, otherwise available under subdivision (a), that exceeds forty thousand dollars ($40,000) or one hundred thousand dollars ($100,000), as applicable.

(c) For those claims filed pursuant to subdivision (a) after November 15, the exemption under that subdivision may be applied to the second installment. If that exemption is so applied, the first installment is still delinquent on December 10, and is subject to delinquent penalties provided for in this division if that installment is not timely paid. A refund shall be made to the taxpayer upon a claim submitted to the auditor if the exemption is applied to the second installment and either of the following is true:

(1) Both installments are paid on or before December 10.

(2) The reduction in taxes resulting from the exemption exceeds the amount of taxes due on the second installment.

SEC. 3. Section 276.2 is added to the Revenue and Taxation Code, to read:

276.2. If the disabled veterans' exemption as described in Section 205.5 would have been available for a property, but for that property being acquired by a person eligible for that exemption only after the lien date, and an appropriate application for that exemption is filed on or before the lien date in the calendar year next following the calendar year in which the property was acquired, there shall be canceled or refunded the amount of any taxes, including any interest or penalties thereon, levied on that portion of the assessed value of the property that would have been exempt under a timely and appropriate application.

SEC. 4. Section 276.3 is added to the Revenue and Taxation Code, to read:

276.3. In the event that property receiving a disabled veterans' exemption as described in Section 205.5 is sold or otherwise transferred to a person who is not eligible for that exemption, the exemption shall cease to apply on the date of that sale or transfer.

SEC. 5. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 923

An act to amend Sections 6011, 6012, 6066, 6366, 6366.1, 6452, 6479.31, 7093.5, 7655, 7657, 7658, 7659.2, 8876, 8877, 8878, 30281, 30282, 30283, 32252, 32255, 32256, 32311, 40101, 40102, 40103, 41095, 41096, 41097, 43152.12, 43152.15, 43155, 43157, 43158, 45153, 45155, 45156, 45156.5, 46154, 46156, 46157, 50112, 50112.2, 50112.3, 50112.4, 55042, 55044, 55046, 60207, 60209, and 60211 of, to add Sections 6245.5 and 46154.1 to, to add Article 1.2 (commencing with Section 7659.9) to Chapter 5 of Part 2 of Division 2 of, to add Article 1.1 (commencing with Section 8670) to Chapter 4 of Part 3 of Division 2 of, to add Article 1.1 (commencing with Section 30190) to Chapter 4 of Part 13 of Division 2 of, to add Article 1.1 (commencing with Section 32260) to Chapter 6 of Part 14 of Division 2 of, to add Article 2.1 (commencing with Section 40067) to Chapter 4 of Part 19 of Division 2 of, to add Article 1.1 (commencing with Section 41060) to Chapter 4 of Part 20 of Division 2 of, to add Article 1.1 (commencing with Section 43170) to Chapter 3 of Part 22 of Division 2 of, to add Article 1.1 (commencing with Section 45160) to Chapter 3 of Part 23 of Division 2 of, to add Article 1.1 (commencing with Section 46160) to Chapter 3 of Part 24 of Division 2 of, to add Article 1.1 (commencing with Section 50112.7) to Chapter 3 of Part 26 of Division 2 of, to add Article 1.1 (commencing with Section 55050) to Chapter 3 of Part 30 of Division 2 of, and to add Article 1.1 (commencing with Section 60250) to Chapter 6 of Part 31 of Division 2 of, and to repeal Sections 32254, 32292, 43156, 45154, 46155, 50112.1, and 55043 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 6011 of the Revenue and Taxation Code is amended to read:

6011. (a) ''Sales price'' means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) ''Sales price'' does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and

county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement'' means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make

and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

SEC. 1.3. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) ''Gross receipts'' mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) ''Gross receipts'' do not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the

average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The price received for labor or services used in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer

agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement" means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

SEC. 1.4. Section 6066 of the Revenue and Taxation Code is amended to read:

6066. (a) Every person desiring to engage in or conduct business as a seller within this state shall file with the board an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the board may require. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the board. The application shall state that the applicant will actively engage in or conduct business as a seller of tangible personal property.

(b) An application filed pursuant to this section may be filed using electronic media as prescribed by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 1.6. Section 6245.5 is added to the Revenue and Taxation Code, to read:

6245.5. (a) A person qualified under subdivision (b) may issue a certificate to a retailer with respect to the amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 when purchasing fuel from the retailer.

(b) A person is qualified for purposes of this section if all of the following conditions are met:

(1) The person was entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel during the prior calendar year.

(2) The person's business remains substantially the same as during the prior calendar year whereby the person expects to be entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel.

(3) The person holds a valid California seller's permit.

(c) A person issuing a certificate for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 is liable for use tax on the amount of the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code if the person used fuel purchased under the certificate in a manner whereby the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.

(d) A person liable for the use tax under subdivision (c) of this section shall report and pay that use tax with the return for the reporting period in which the person uses the fuel in such a manner that the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.

SEC. 2. Section 6366 of the Revenue and Taxation Code is amended to read:

6366. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, the following:

(1) Aircraft sold to any person using the aircraft as a common carrier of persons or property under authority of the laws of this state, of the United States, or of any foreign government, or sold to any foreign government for use by that government outside of this state, or sold to any person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.

(2) (A) A ground control station sold to any foreign government for use by that government outside of this state or sold to any person who is not a resident of this state and who will not use that ground control station in this state otherwise than in the removal of the ground control station from this state.

(B) A ''ground control station'' means a portable facility used to operate aircraft in the air without a pilot on board. The term includes controls, video equipment, computers, generators, and communications equipment, sold as an integral part of the station, and antennas used to control the aircraft. The term does not include trucks, tractor-trailers, or other devices solely used to transport the station.

(3) Tangible personal property that is purchased on or after October 1, 1996, and becomes a component part of any aircraft described in paragraph (1), as a result of the maintenance, repair, overhaul, or improvement of that aircraft in compliance with Federal Aviation Administration requirements, and any charges made for labor and services rendered with respect to that maintenance, repair, overhaul, or improvement.

(b) With respect to aircraft sold on or after January 1, 1997, it shall be presumed that a person is not engaged in business as a common carrier if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 20 percent of the purchase cost of the aircraft to him or her, or fifty thousand dollars ($50,000), whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the person is engaged in business as a common carrier.

In no event shall "gross receipts'' include compensation by the person or related parties for use of the aircraft as a common carrier.

SEC. 3. Section 6366.1 of the Revenue and Taxation Code is amended to read:

6366.1. (a) 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 aircraft which are leased, or are sold to persons for the purpose of leasing, to lessees using such aircraft as

common carriers of persons or property under authority of the laws of this state, of the United States or any foreign government, or to any foreign government as lessees for use by such government outside the state, or to persons as lessees who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state.

(b) 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 tangible personal property sold to an aircraft manufacturer and incorporated into aircraft to be leased by the manufacturer under conditions set forth in subdivision (a) of this section.

(c) With respect to aircraft leased, or sold for the purpose of leasing, on or after January 1, 1997, it shall be presumed that the aircraft is not regularly used in the business of transporting for hire property or persons if the lessor's yearly gross receipts from the lease of that aircraft to persons using the aircraft as common carriers of property or persons do not exceed 20 percent of the cost of the aircraft to the lessor, or fifty thousand dollars ($50,000), whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the aircraft is regularly used as a common carrier of property or persons.

In no event shall ''gross receipts'' include compensation by the lessor or related parties for use of the aircraft as a common carrier.

SEC. 4. Section 6452 of the Revenue and Taxation Code is amended to read:

6452. (a) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) For purposes of the sales tax, a return shall be filed by every seller and also by every person who is liable for the sales tax under this part. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax.

(c) Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor punishable as provided in Section 7153.

SEC. 5. Section 6479.31 of the Revenue and Taxation Code is amended to read:

6479.31. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Payment is deemed timely for electronically filed returns if the transmission is completed on or before the due date of the return.

SEC. 6. Section 7093.5 of the Revenue and Taxation Code is amended to read:

7093.5. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file in the office of the

executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 7. Section 7655 of the Revenue and Taxation Code is amended to read:

7655. (a) Any distributor who fails to pay the amount of license tax shown to be due by the distributor's return on or before the 25th day of the month following the monthly period to which it relates must pay a penalty of 10 percent of the license tax, together with interest on that license tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the license tax became due and payable to the state until the date of payment.

(b) Any distributor who fails to file a return in accordance with the due dates set forth in Sections 7651 and 7652, shall pay a penalty of 10 percent of the amount of the license tax, exclusive of prepayments, with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the license tax for which the return is required, exclusive of any prepayments, for any one return.

SEC. 8. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7659.9, 7660, and 7713.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 8.5. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7659.9, 7660, and 7713.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty

of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 9. Section 7658 of the Revenue and Taxation Code is amended to read:

7658. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 7655, 7656, 7659.9, and 7661.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 9.5. Section 7659.2 of the Revenue and Taxation Code is amended to read:

7659.2. Except in the case of a person required to remit amounts due in accordance with Article 1.2 (commencing with Section 7659.9), for purposes of Section 7659.1, each prepayment shall be accompanied by a report of the amount of that prepayment in a form prescribed by the board and shall be filed with the board on or before the 15th day following each monthly period together with a remittance payable to the Controller of the amount due.

SEC. 10. Article 1.2 (commencing with Section 7659.9) is added to Chapter 5 of Part 2 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.2. Payment by Electronic Funds Transfer

7659.9. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 7651) and Article 1.1 (commencing with Section 7659). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following

the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment incorrectly remitted.

(f) Except as provided by Sections 7659.5 and 7659.6, any person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 7660) or Article 2.5 (commencing with Section 7670), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 7655.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 7659.5 and 7659.6 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

7659.91. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 7659.9. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

7659.92. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 7659.9 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 11. Article 1.1 (commencing with Section 8760) is added to Chapter 4 of Part 3 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

8760. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 8751). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 8776) or Article 3 (commencing with Section 8801), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 8876.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

8761. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 8760. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

8762. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated

clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 8760 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 12. Section 8876 of the Revenue and Taxation Code is amended to read:

8876. (a) Any user who fails to pay any tax, except taxes determined by the board under Article 2 (commencing with Section 8776) or Article 3 (commencing with Section 8801), within the time required shall pay a penalty of 10 percent of the amount of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable until the date of payment.

(b) Any user who fails to file a return in accordance with the due date set forth in Section 8751 or the due date established by the board in accordance with Section 8755, shall pay a penalty of 10 percent of the amount of the tax with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the tax for which the return is required for any one return.

SEC. 13. Section 8877 of the Revenue and Taxation Code is amended to read:

8877. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8801, 8854, 8760, and 8876.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 13.5. Section 8877 of the Revenue and Taxation Code is amended to read:

8877. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of

ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8760, 8801, 8854, and 8876.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 14. Section 8878 of the Revenue and Taxation Code is amended to read:

8878. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 8760, 8803, and 8876.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 16. Article 1.1 (commencing with Section 30190) is added to Chapter 4 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

30190. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 30181). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 30173) or Article 2 (commencing with Section 30201) or Article 3 (commencing with Section 30221), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 30281.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

30191. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 30190. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

30192. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 30190 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 17. Section 30281 of the Revenue and Taxation Code is amended to read:

30281. (a) Any person who fails to pay any tax, except a tax determined by the board under Article 2 (commencing with Section 30201) or Article 3 (commencing with Section 30221), within the time required shall pay a penalty of 10 percent of the amount of the tax, in addition to the tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 30181 or Section 30183, shall pay a penalty of 10 percent of the amount of the tax with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the tax for which the return is required for any one return.

SEC. 18. Section 30282 of the Revenue and Taxation Code is amended to read:

30282. If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the penalty provided by Sections 30171, 30190, 30221, 30264, and 30281.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 18.5. Section 30282 of the Revenue and Taxation Code is amended to read:

30282. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the penalty provided by Sections 30171, 30190, 30221, 30264, and 30281.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 19. Section 30283 of the Revenue and Taxation Code is amended to read:

30283. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 30185, 30190, 30223, and 30281.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 21. Section 32252 of the Revenue and Taxation Code is amended to read:

32252. (a) Any taxpayer who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 32271) or Article 3 (commencing with

Section 32291), within the time required shall pay a penalty of 10 percent of the amount of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable until the date of payment.

(b) Any person who fails to file a return in accordance with the due dates set forth in Sections 32251, or the due date established by the board in accordance with Section 32251.5 shall pay a penalty of fifty dollars ($50).

(c) The penalties imposed by this section shall be limited to either the fifty dollars ($50) provided in subdivision (b), or 10 percent of the tax provided in subdivision (a), whichever is greater.

SEC. 22. Section 32254 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 32255 of the Revenue and Taxation Code is amended to read:

32255. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 32252, 32260, 32291, 32292, and 32305.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 23.5. Section 32255 of the Revenue and Taxation Code is amended to read:

32255. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 32252, 32260, 32291, 32292, and 32305.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 24. Section 32256 of the Revenue and Taxation Code is amended to read:

32256. If the board finds that a person's failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the

person may be relieved of the interest provided by Sections 32252, 32253, 32260, and 32291.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 25. Article 1.1 (commencing with Section 32260) is added to Chapter 6 of Part 14 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

32260. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 32251). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 32271) or Article 3 (commencing with Section 32291), within the time required shall pay a penalty of 10 percent of the tax or amount

of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 32252.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

32261. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 32260. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

32262. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 32260 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 26. Section 32292 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 32311 of the Revenue and Taxation Code is amended to read:

32311. If the board believes that the collection of any amount of tax will be jeopardized by delay, it shall thereupon make a determination of the amount of tax due, noting that fact upon the determination, and the amount of tax shall be immediately due and payable. If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Section 32252 shall attach to the amount of tax specified therein.

SEC. 29. Article 2.1 (commencing with Section 40067) is added to Chapter 4 of Part 19 of Division 2 of the Revenue and Taxation Code, to read:

Article 2.1. Payment by Electronic Funds Transfer

40067. (a) Any person whose estimated surcharge liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated surcharge liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 40051) and Article 2 (commencing with Section 40061). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting surcharges by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(e) Any person required to remit surcharges pursuant to this article who remits those surcharges by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the surcharges incorrectly remitted.

(f) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081), within the time required shall pay a penalty of 10 percent of the surcharge or amount of surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated surcharge liability averages twenty thousand dollars ($20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the surcharge due for any one return. Any person remitting surcharges by electronic funds transfer shall be subject to the penalties under this section and not Section 40101.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

40068. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the

person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 40067. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

40069. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of surcharge. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 40067 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 30. Section 40101 of the Revenue and Taxation Code is amended to read:

40101. (a) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081), within the time required shall pay a penalty of 10 percent of the surcharge or amount of the surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 40061 shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the surcharge for which the return is required for any one return.

SEC. 31. Section 40102 of the Revenue and Taxation Code is amended to read:

40102. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 40067, 40081, 40096, and 40101.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 31.5. Section 40102 of the Revenue and Taxation Code is amended to read:

40102. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 40067, 40081, 40096, and 40101.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 32. Section 40103 of the Revenue and Taxation Code is amended to read:

40103. If the board finds that a person's failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 40065, 40067, 40083, and 40101.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 34. Article 1.1 (commencing with Section 41060) is added to Chapter 4 of Part 20 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

41060. (a) Any person whose estimated surcharge liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated surcharge liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 41050). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting surcharges by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of the surcharges with respect to the period for which the return is required.

(e) Any person required to remit surcharges pursuant to this article who remits those surcharges by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the surcharges incorrectly remitted.

(f) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 41070) or Article 4 (commencing with Section 41080), within the time required shall pay a penalty of 10 percent of the surcharge or amount of surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated surcharge liability averages twenty thousand dollars ($20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the surcharges due for any one return. Any person remitting surcharges by electronic funds transfer shall be subject to the penalties under this section and not Section 41095.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

41061. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 41060. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

41062. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and

which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the surcharge. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 41060 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 35. Section 41095 of the Revenue and Taxation Code is amended to read:

41095. (a) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 41070) or Article 4 (commencing with Section 41080), within the time required shall pay a penalty of 10 percent of the surcharge or amount of the surcharge or ten dollars ($10), whichever is greater, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 41052 or the due date established by the board in accordance with Section 41052.1, shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required, or ten dollars ($10), whichever is greater.

(c) The penalties imposed by this section shall be limited to either 10 percent of the surcharge for which the return is required for any one return, or ten dollars ($10), whichever is greater.

SEC. 36. Section 41096 of the Revenue and Taxation Code is amended to read:

41096. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 41060, 41080, 41090, and 41095.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 36.5. Section 41096 of the Revenue and Taxation Code is amended to read:

41096. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 41060, 41080, 41090, and 41095.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 37. Section 41097 of the Revenue and Taxation Code is amended to read:

41097. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 41054, 41060, 41082, and 41095.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 39. Section 43152.12 of the Revenue and Taxation Code is amended to read:

43152.12. (a) In addition to the requirements imposed pursuant to Section 43152.6, every operator of a facility subject to the fee specified in Section 25205.2 of the Health and Safety Code shall make two prepayments of the fee to the board, which are due and payable on or before the last day of February and the last day of August of each calendar year. Each prepayment shall be accompanied by a prepayment return in a form prescribed by the board.

(b) For purposes of subdivision (a), the amount of each prepayment shall be not less than 50 percent of the applicable fee imposed on the facility, based on the facility's type and size, as stated on the hazardous waste facilities permit, interim status document, or Part A application, or as specified in Sections 25205.1 and 25205.4 of the Health and Safety Code.

(c) The board shall credit the amount of the prepayments against the amount of the fee due and payable for the reporting period in which the prepayments are due.

(d) Any person required to make a prepayment pursuant to this section who fails to make a prepayment by the due dates specified in subdivision (a) shall also pay the penalties and interest in accordance with Section 43155.

SEC. 40. Section 43152.15 of the Revenue and Taxation Code is amended to read:

43152.15. (a) In addition to the requirements imposed pursuant to Sections 43152.7 and 43152.11, every generator subject to the fees specified in Sections 25205.5 and 25205.9 of the Health and Safety Code shall make a prepayment of the fee by site to the board which is due and payable on or before the last day of August of each calendar year. The prepayment shall be accompanied by a prepayment return in a form prescribed by the board.

(b) For purposes of subdivision (a), the amount of the prepayment shall be not less than either of the following:

(1) One hundred percent of the applicable fee imposed on the generator, based on the generator's fee category as specified in Section 25205.5 of the Health and Safety Code for the total volume of hazardous waste generated by site during the period January 1 to June 30, inclusive, of the current calendar year in which the prepayment is due. The prepayment may be offset by fees paid by the generator for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department which includes the following:

(A) The local fees are paid for the current calendar year for which the prepayment is due or the local fees are paid for the preceding calendar year, if fees have not been paid for the current year.

(B) The offset is subject to the limitations and requirements specified in subdivision (c) of Section 43152.7.

(2) Fifty percent of the generator fee liability paid to the board by site for the preceding calendar year provided the generator paid a generator fee liability to the board for the preceding calendar year for that site.

(c) The board shall credit the amount of the prepayment against the amount of the fee due and payable for the calendar year in which the prepayment is due.

(d) Notwithstanding any other provision in this section, the prepayment of a generator fee shall not be required for any amount due that is less than five hundred dollars ($500), or for any other amount due if the board determines that prepayment is not in the best economic interest of the program.

(e) Any person required to make a prepayment pursuant to this section who fails to make a prepayment by the due date specified in subdivision (a) shall also pay penalties and interest in accordance with Section 43155.

SEC. 41. Section 43155 of the Revenue and Taxation Code is amended to read:

43155. (a) Any person who fails to pay any tax or prepayment, except amounts of determinations made by the board under Article 2 (commencing with Section 43201), within the time required shall pay a penalty of 10 percent of the tax or prepayment, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return or prepayment with the board in accordance with this part within the time prescribed for the filing of a return or prepayment, a penalty of 10 percent of the amount of tax or prepayment shall be added thereto on account of the delinquency.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the taxes for which the return or prepayment is required for any one return or prepayment.

SEC. 42. Section 43156 of the Revenue and Taxation Code is repealed.

SEC. 43. Section 43157 of the Revenue and Taxation Code is amended to read:

43157. If the board finds that a person's failure to make a timely return, prepayment, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 43155, 43170, and 43306.

Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 43.5. Section 43157 of the Revenue and Taxation Code is amended to read:

43157. (a) If the board finds that a person's failure to make a timely return, prepayment, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred

notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 43155, 43170, and 43306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 44. Section 43158 of the Revenue and Taxation Code is amended to read:

43158. If the board finds that a person's failure to make a timely return or payment was due to disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided for by Sections 43154, 43155, 43170, and 43201. Any person seeking to be relieved of interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 45. Article 1.1 (commencing with Section 43170) is added to Chapter 3 of Part 22 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

43170. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 43151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding

reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 43201), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return or prepayment. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 43155.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

43171. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 43170. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

43172. (a) ''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 transfers shall be accomplished by an automated clearinghouse

debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 43170 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 47. Section 45153 of the Revenue and Taxation Code is amended to read:

45153. (a) Any person who fails to pay any fee to the state or any amount of fee required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 45201), within the time required shall pay a penalty of 10 percent of the fee or amount of the fee in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be paid became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 45151, shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the surcharge for which the return is required for any one return.

SEC. 48. Section 45154 of the Revenue and Taxation Code is repealed.

SEC. 49. Section 45155 of the Revenue and Taxation Code is amended to read:

45155. (a) If the board finds that a person's failure to make a timely report or return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 45153, 45160, and 45306.

(b) Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 49.5. Section 45155 of the Revenue and Taxation Code is amended to read:

45155. (a) If the board finds that a person's failure to make a timely report or return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 45153, 45160, and 45306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 50. Section 45156 of the Revenue and Taxation Code is amended to read:

45156. If the board finds that a person's failure to make a timely return or payment was due to disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided for by Sections 45152, 45153, 45160, and 45201. Any person seeking to be relieved of interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 51. Section 45156.5 of the Revenue and Taxation Code is amended to read:

45156.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 45154 and may relieve all or any part of the interest imposed on a person by Section 45201 where the deficiency determination is made because no return was filed or payment of the fee was not made timely, where the failure to pay fees

is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 52. Article 1.1 (commencing with Section 45160) is added to Chapter 3 of Part 23 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

45160. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 45151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 45201), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars ($20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 45153.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

45161. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 45160. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

45162. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and

which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 45160 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 54. Section 46154 of the Revenue and Taxation Code is amended to read:

46154. (a) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 46201) or Article 3 (commencing with Section 46251), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(b) Any feepayer who fails to file a return in accordance with the due date set forth in subdivision (a) of Section 46151 or the due date established by the board in accordance with Section 46152, shall pay a penalty of 10 percent of the amount of the fee with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the fee for which the return is required for any one return.

SEC. 54.5. Section 46154.1 is added to the Revenue and Taxation Code, to read:

46154.1. If the information return pursuant to subdivision (c) of Section 46151 is not filed within the time prescribed, a penalty of five hundred dollars ($500) shall be assessed.

SEC. 55. Section 46155 of the Revenue and Taxation Code is repealed.

SEC. 56. Section 46156 of the Revenue and Taxation Code is amended to read:

46156. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 46154, 46160, 46251, and 46356.

(b) Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 56.5. Section 46156 of the Revenue and Taxation Code is amended to read:

46156. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 46154, 46160, 46251, and 46356.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 57. Section 46157 of the Revenue and Taxation Code is amended to read:

46157. (a) If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 46153, 46154, 46160, and 46253.

(b) Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 58. Article 1.1 (commencing with Section 46160) is added to Chapter 3 of Part 24 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

46160. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 46151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 46201) or Article 3, (commencing with Section 46251), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars ($20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 46154.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

46161. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 46160. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

46162. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated

clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 46160 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 60. Section 50112 of the Revenue and Taxation Code is amended to read:

50112. (a) Any feepayer who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 50113) within the time required shall pay a penalty of 10 percent of the amount of the fee, together with interest on that fee at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable until the date of payment.

(b) Any feepayer who fails to file a return in accordance with the due date set forth in Section 50109 or the due date established by the board in accordance with Section 50110, shall pay a penalty of 10 percent of the amount of the fee with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the fee for which the return is required for any one return.

SEC. 61. Section 50112.1 of the Revenue and Taxation Code is repealed.

SEC. 62. Section 50112.2 of the Revenue and Taxation Code is amended to read:

50112.2. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalties provided by Sections 50112, 50112.7, and 50119.

(b) Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 62.5. Section 50112.2 of the Revenue and Taxation Code is amended to read:

50112.2. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalties provided by Sections 50112, 50112.7, and 50119.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 63. Section 50112.3 of the Revenue and Taxation Code is amended to read:

50112.3. (a) If the board finds that a person's failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 50111, 50112, and 50112.7.

(b) Any person seeking to be relieved of the interest provided by Sections 50111, 50112, and 50112.7 shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 64. Section 50112.4 of the Revenue and Taxation Code is amended to read:

50112.4. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 50112.1 and may relieve all or any part of the interest imposed on a person by Section 50113 when the deficiency determination is made because no return was filed or payment of the fee was not made timely, where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 65. Article 1.1 (commencing with Section 50112.7) is added to Chapter 3 of Part 26 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

50112.7. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 50109). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees, with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 50113) within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars ($20,000) or more per month, the board may

consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 50112.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

50112.8. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 50112.7. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

50112.9. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 50112.7 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 67. Section 55042 of the Revenue and Taxation Code is amended to read:

55042. (a) Any person who fails to pay any fee, except fees determined by the board under Article 2 (commencing with Section 55061), within the time required shall pay a penalty of 10 percent of the amount of the fee, together with interest on that fee at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable until the date of payment.

(b) Any person who fails to file a return within the time prescribed for filing the return shall pay a penalty of 10 percent of the amount of the fee with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the fee for which the return is required for any one return.

SEC. 68. Section 55043 of the Revenue and Taxation Code is repealed.

SEC. 69. Section 55044 of the Revenue and Taxation Code is amended to read:

55044. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 55042, 55050, and 55086.

Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 69.5. Section 55044 of the Revenue and Taxation Code is amended to read:

55044. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 55042, 55050, and 55086.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 70. Section 55046 of the Revenue and Taxation Code is amended to read:

55046. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 55043 and may relieve all or any part of the interest imposed on a person by Section 55061 when the deficiency determination is made because no return was filed or payment of the fee was not made timely, where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 71. Article 1.1 (commencing with Section 55050) is added to Chapter 3 of Part 30 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

55050. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates prescribed for the payment of the fee. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the

state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees, exclusive of prepayments, with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 55061) within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars ($20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due, exclusive of prepayments, for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 55042.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

55051. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 55050. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

55052. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 55050 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 73. Section 60207 of the Revenue and Taxation Code is amended to read:

60207. (a) Any person who fails to pay the amount of tax shown to be due by that person's return on or before the last day of the month following the reporting period to which it relates, shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due dates set forth in Article 1 (commencing with Section 60201) shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the taxes for which the return is required for any one return.

SEC. 74. Section 60209 of the Revenue and Taxation Code is amended to read:

60209. If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 60207, 60250, 60301, 60338, and 60355.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

SEC. 74.5. Section 60209 of the Revenue and Taxation Code is amended to read:

60209. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 60207, 60250, 60301, 60338, and 60355.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 75. Section 60211 of the Revenue and Taxation Code is amended to read:

60211. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 60207, 60208, 60250, and 60302.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

SEC. 76. Article 1.1 (commencing with Section 60250) is added to Chapter 6 of Part 31 of Division 2 of the Revenue and Taxation Code, to read:

Article 1.1. Payment by Electronic Funds Transfer

60250. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 60201). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 60301) or Article 3 (commencing with Section 60310), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 60207.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

60251. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 60250. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

60252. (a) ''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 transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) ''Automated clearinghouse'' means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) ''Automated clearinghouse debit'' means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) ''Automated clearinghouse credit'' means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated

clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) ''Fedwire transfer'' means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 60250 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 77. Sections 8.5, 13.5, 18.5, 23.5, 31.5, 36.5, 43.5, 49.5, 56.5, 62.5, 69.5, and 74.5 of this bill incorporate amendments to Sections 7657, 8877, 30282, 32255, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, and 60209 of the Revenue and Taxation Code proposed by both this bill and AB 2898. These sections shall only become operative if (1) both bills are enacted and become effective January 1, 2001, (2) each bill amends Sections 7657, 8877, 30282, 32255, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, and 60209 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2898, in which case Sections 8, 13, 18, 23, 31, 36, 43, 49, 56, 62, 69, and 74 of this bill shall not become operative.

CHAPTER 924

An act to amend Section 2952 of the Civil Code, to amend Section 1563 of the Code of Civil Procedure, and to amend Sections 27001, 27002.1, and 27201 of the Government Code, relating to government records.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 2952 of the Civil Code is amended to read:

2952. Mortgages and deeds of trust of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof; provided, however, that a mortgage or deed of trust of real property may be recorded and constructive notice of the same and the contents thereof given in the following manner:

Any person may record in the office of the county recorder of any county fictitious mortgages and deeds of trust of real property. Those

fictitious mortgages and deeds of trust need not be acknowledged, or proved or certified to be recorded or entitled to record. Those mortgages and deeds of trust shall have noted upon the face thereof that they are fictitious. The county recorder shall index and record fictitious mortgages and deeds of trust in the same manner as other mortgages and deeds of trust are recorded, and shall note on all indices and records of the same that they are fictitious. Thereafter, any of the provisions of any recorded fictitious mortgage or deed of trust may be included for any and all purposes in any mortgage or deed of trust by reference therein to any of those provisions, without setting the same forth in full; provided, the fictitious mortgage or deed of trust is of record in the county in which the mortgage or deed of trust adopting or including by reference any of the provisions thereof is recorded. The reference shall contain a statement, as to each county in which the mortgage or deed of trust containing such a reference is recorded, of the date the fictitious mortgage or deed of trust was recorded, the county recorder's office wherein it is recorded, and the book or volume and the first page of the records in the recorder's office wherein and at which the fictitious mortgage or deed of trust was recorded, and a statement by paragraph numbers or any other method that will definitely identify the same, of the specific provisions of the fictitious mortgage or deed of trust that are being so adopted and included therein. The recording of any mortgage or deed of trust which has included therein any of those provisions by reference as aforesaid shall operate as constructive notice of the whole thereof including the terms, as a part of the written contents of the mortgage or deed of trust, of those provisions so included by reference as though the same were written in full therein. The parties bound or to be bound by provisions so adopted and included by reference shall be bound thereby in the same manner and with like effect for all purposes as though those provisions had been and were set forth in full in any mortgage or deed of trust.

The amendment to this section enacted by the 1957 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

SEC. 2. Section 1563 of the Code of Civil Procedure is amended to read:

1563. (a) Except as provided in subdivisions (b) and (c), all escheated property delivered to the Controller under this chapter shall be sold by the Controller to the highest bidder at public sale in whatever city in the state affords in his or her judgment the most favorable market for the property involved, or the Controller may conduct the sale by electronic media, including , but not limited to, the Internet, if in his or her judgment it is cost-effective to conduct the sale of the property involved in that manner. The Controller may decline the highest bid and

reoffer the property for sale if he or she considers the price bid insufficient. The Controller need not offer any property for sale if, in his or her opinion, the probable cost of sale exceeds the value of the property. Any sale of escheated property held under this section shall be preceded by a single publication of notice thereof, at least one week in advance of sale, in an English language newspaper of general circulation in the county where the property is to be sold.

(b) Securities listed on an established stock exchange within two years following receipt by the Controller shall be sold at the prevailing prices on that exchange. Other securities may be sold over the counter at prevailing prices or, with prior approval of the State Board of Control, by any other method that the Controller may determine to be advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment. Subdivision (a) does not apply to the property described in this subdivision.

(c) All escheated property consisting of military awards and decorations that is delivered to the Controller is exempt from subdivision (a) and shall be held in trust for the Controller at the California National Guard Museum and Resource Center. Any person claiming an interest in the escheated property may file a claim to the property pursuant to Article 4 (commencing with Section 1540).

(d) The purchaser at any sale conducted by the Controller pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The Controller shall execute all documents necessary to complete the transfer of title.

SEC. 3. Section 27001 of the Government Code is amended to read:

27001. The treasurer shall file and keep the certificates of the auditor delivered to him or her when money is paid into the treasury. Notwithstanding Sections 26201, 26202, and 26205, the treasurer may destroy any certificate pursuant to this section under either of the following circumstances:

(a) The certificate has been filed for more than five years.

(b) The certificate has been filed for more than one year, and all of the following conditions are complied with:

(1) The record, paper, or document is photographed, microphotographed, or reproduced on film of a type approved for permanent photographic records by the National Bureau of Standards.

(2) The device used to reproduce the record, paper, or document on film is one that accurately reproduces the original thereof in all details.

(3) The photographs, microphotographs, or other reproductions on film are placed in conveniently accessible files and provision is made for preserving, examining, and using the same.

(4) The record, paper, or document is reproduced and preserved utilizing other information technology .

SEC. 4. Section 27002.1 of the Government Code is amended to read:

27002.1. (a) The treasurer may, in lieu of entering in books an account of the receipt and expenditure of all money received or paid out by him or her as provided in Section 27002, photograph, microphotograph, photocopy, or enter into an electronic data-processing system that utilizes optical transmission and filing, all receipts for money received by him or her and all warrants paid out by him or her.

(b) Every reproduction described in subdivision (a) shall be deemed and considered an original, and a transcript, exemplification, or certified copy of any of those reproductions shall be deemed and considered a transcript, exemplification, or certified copy, as the case may be, of the original.

(c) All reproductions described in subdivision (a) shall be properly indexed and placed in convenient, accessible files. Each roll of microfilm shall be deemed and constitute a book, and shall be designated and numbered, and provision shall be made for preserving, examining, and using it.

A duplicate of each roll of microfilm shall be made and kept in a safe and separate place.

SEC. 5. Section 27201 of the Government Code is amended to read:

27201. (a) The recorder shall, upon payment of proper fees and taxes, accept for recordation any instrument, paper, or notice that is authorized or required by statute or court order to be recorded, if the instrument, paper, or notice contains sufficient information to be indexed as provided by statute, meets recording requirements of state statutes and local ordinances, and is photographically reproducible. The county recorder shall not refuse to record any instrument, paper, or notice that is authorized or required by statute or court order to be recorded on the basis of its lack of legal sufficiency.

''Photographically reproducible,'' for purposes of this division, means all instruments, papers, or notices that comply with standards as recommended by the American National Standards Institute or the Association for Information and Image Management for recording of records.

(b) (1) Each instrument, paper, or notice shall contain an original signature or signatures, except as otherwise provided by law, or be a certified copy of the original.

(2) A facsimile signature shall be accepted on a lien recorded by a governmental agency when that facsimile signature has been officially adopted by that agency. The lien shall have noted on its face a statement to that effect. A copy of the agency's resolution or action adopting the

signature for facsimile transmission purposes or a certified copy of the agency's adopted signature shall be provided to the county recorder when the signature is officially adopted by the agency, or at the beginning of each calendar year.

CHAPTER 925

An act to add and repeal Sections 21085.7 and 21151.10 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 21085.7 is added to the Public Resources Code, to read:

21085.7. (a) (1) If an environmental impact report for a project at an airport that is owned by a city and county and that is located in another county identifies as a proposed mitigation measure the acquisition, enhancement, and restoration of salt ponds and the lead agency proposes the payment of funds to one or more public agencies to mitigate the impacts of the proposed project and the public agency or agencies propose to use those funds to acquire, enhance, and restore land, the lead agency shall include in the environmental impact report on the proposed project a detailed statement of the mitigation measure, including all of the following:

(A) An analysis of the relationship between the impacts of the proposed project and the benefits of the proposed acquisition, enhancement, and restoration of land that the payment of funds would allow.

(B) An analysis of the feasibility of the proposed acquisition, enhancement, and restoration.

(C) A discussion of the expected impacts of the proposed acquisition, enhancement, and restoration.

(2) The detailed statement of the mitigation measure shall consist of the following:

(A) Information in existence at the time the environmental impact report is prepared, including the restoration goals specific to salt ponds as identified in the San Francisco Estuary Baylands Ecosystem Goals Report published in 1999.

(B) Information that is reasonably obtainable, including, but not limited to, a hydrodynamic analysis of potential flood impacts, and analyses regarding the potential for the following:

(i) Changes to the waters and tidal currents of the southern portions of the San Francisco Bay.

(ii) Potential alterations to the San Francisco Bay floor.

(iii) Related impacts on water quality.

(3) If, at the time of the publication of the draft environmental impact report, a restoration plan has not been adopted by a public agency with jurisdiction to carry out the restoration project, the lead agency for the airport project need not prepare a detailed restoration plan or analyze the impacts of a restoration plan for the lands proposed for acquisition, enhancement, and restoration; however, the lead agency shall evaluate a conceptual restoration plan, and shall fully evaluate a potentially feasible alternate mitigation measure that does not depend on the salt ponds.

(b) If the lead agency for the airport project approves the proposed project and approves the payment of funds for the acquisition, enhancement, and restoration of land as a mitigation measure, it shall make both such approvals contingent upon an agreement between the lead agency and the public agency or agencies wherein the public agency or agencies agree to use the funds solely for the following purposes:

(1) The acquisition, enhancement, and restoration of the lands identified by the lead agency in its detailed statement of the mitigation measure.

(2) The preparation and implementation of a restoration plan that, at a minimum, mitigates the significant impact that would be substantially lessened or avoided by implementation of the mitigation measure as identified in the final environmental impact report certified by the lead agency.

(c) The agreement described in subdivision (b) shall identify a feasible alternative mitigation measure to be implemented if the restoration of all or a portion of the salt ponds proves to be infeasible, as determined by the lead agency.

(d) Nothing in this section shall be interpreted to assess or assign liability with respect to the salt ponds.

(e) Funds for the costs of mitigation shall include the costs of the environmental reviews conducted by a state agency of the restoration plan prepared by a state agency.

(f) This section shall only apply to the acquisition, enhancement, and restoration of salt ponds located in the southerly portion of the San Francisco Bay.

(g) As used in this section, ‘‘acquisition, enhancement, and restoration’’ also includes acquisition, enhancement, or restoration.

(h) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. Section 21151.10 is added to the Public Resources Code, to read:

21151.10. (a) If an environmental impact report is prepared for a project at an airport that is owned by a city and county and that is located in another county that includes more than one acre of fill in the San Francisco Bay, the environmental impact report shall analyze, as an alternative to the project, a form of joint management of that airport owned by the city and county and the Oakland International Airport. This joint management alternative shall separately analyze an underground high-speed rail transit connection and a high-speed ferry connection between the two airports and shall utilize in both analyses all technological enhancements reasonably expected to be available. The analysis of the joint management alternative shall include a meaningful evaluation, analysis, and comparison of the alternative with the proposed project, and shall assess the feasibility of the alternative notwithstanding that changes in state law may be required for its implementation. The environmental impact report shall identify any changes in state law that would be required in order to implement this alternative.

(b) Nothing in this section or in Section 21085.7 shall be interpreted in a manner that alters the lead agency's obligation to comply with this division in connection with proposed mitigation measures other than the mitigation measure described in Section 21085.7.

(c) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 3. The Legislature finds and declares that because of a unique situation involving a construction project at San Francisco International Airport, a statute of general applicability cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution and that a special statute is therefore necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17550 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 926

An act to amend Sections 1816, 3110.5, and 3112 of, to amend and renumber Section 3027 of, and to add Sections 3027 and 3118 to, the Family Code, and to amend Section 827 of the Welfare and Institutions Code, relating to child custody proceedings.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 1816 of the Family Code is amended to read:

1816. (a) Supervising and associate counselors and mediators described in Section 3164 and court-connected and private child custody evaluators described in Section 3110.5 shall participate in programs of continuing instruction in domestic violence, including child abuse, as may be arranged and provided to them. This training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues.

(b) Areas of instruction shall include, but are not limited to, the following:

(1) The effects of domestic violence on children.

(2) The nature and extent of domestic violence.

(3) The social and family dynamics of domestic violence.

(4) Techniques for identifying and assisting families affected by domestic violence.

(5) Interviewing, documentation of, and appropriate recommendations for families affected by domestic violence.

(6) The legal rights of, and remedies available to, victims.

(7) Availability of community and legal domestic violence resources.

(c) The Judicial Council shall develop standards for the training programs. The Judicial Council shall solicit the assistance of community organizations concerned with domestic violence and child abuse and shall seek to develop training programs that will maximize coordination between conciliation courts and local agencies concerned with domestic violence.

SEC. 2. Section 3027 of the Family Code is amended and renumbered to read:

3027.1. (a) If a court determines, based on the investigation described in Section 3027 or other evidence presented to it, that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed all costs incurred by the party

accused as a direct result of defending the accusation, and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation. For the purposes of this section, ''person'' includes a witness, a party, or a party's attorney.

(b) On motion by any person requesting sanctions under this section, the court shall issue its order to show cause why the requested sanctions should not be imposed. The order to show cause shall be served on the person against whom the sanctions are sought and a hearing thereon shall be scheduled by the court to be conducted at least 15 days after the order is served.

(c) The remedy provided by this section is in addition to any other remedy provided by law.

SEC. 3. Section 3027 is added to the Family Code, to read:

3027. (a) If allegations of child sexual abuse are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this section shall affect the applicability of Section 16504 or 16506 of the Welfare and Institutions Code.

(b) If allegations of child sexual abuse are made during a child custody proceeding, the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code. Upon completion of the investigation, the agency shall report its findings to the court.

SEC. 4. Section 3110.5 of the Family Code is amended to read:

3110.5. (a) No person shall be a court-connected or private child custody evaluator under this chapter unless the person has completed the domestic violence and child abuse training program described in Section 1816 and has complied with Rules 1257.3 and 1257.7 of the California Rules of Court.

(b) (1) On or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure.

(A) The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. The Judicial Council shall establish forms to implement this section. The rule shall permit court-connected evaluators to conduct evaluations if they meet all of the qualifications established by the Judicial Council. The education, experience, and training requirements to be specified for court-connected evaluators

shall include, but shall not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships.

(B) The rule shall require all evaluators to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The rule shall also require evaluators to inform each adult party of the purpose, nature, and method of the evaluation.

(C) The rule may allow courts to permit the parties to stipulate to an evaluator of their choosing with the approval of the court under the circumstances set forth in subdivision (d). The rule may require courts to provide general information about how parties can contact qualified child custody evaluators in their county.

(2) On or before January 1, 2004, the Judicial Council shall include in the statewide rule of court created pursuant to this section a requirement that all court-connected and private child custody evaluators receive training in the nature of child sexual abuse. The Judicial Council shall develop standards for this training that shall include, but not be limited to, the following:

(A) Children's patterns of hiding and disclosing sexual abuse occurring in a family setting.

(B) The effects of sexual abuse on children.

(C) The nature and extent of child sexual abuse.

(D) The social and family dynamics of child sexual abuse.

(E) Techniques for identifying and assisting families affected by child sexual abuse.

(F) Legal rights, protections, and remedies available to victims of child sexual abuse.

(c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person shall be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure unless the person meets one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) shall not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected or private child custody evaluator shall not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division unless that person has completed child sexual abuse training as required by this section.

SEC. 5. Section 3112 of the Family Code is amended to read:

3112. (a) Where a court-appointed investigator is directed by the court to conduct a custody investigation or evaluation pursuant to this chapter or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of the minor. If the court finds the parent, guardian, or other person able to pay all or part of the expense of the investigation, report, and recommendation, the court may make an order requiring the parent, guardian, or other person to repay the court the amount the court determines proper.

(b) The repayment shall be made to the court. The court shall keep suitable accounts of the expenses and repayments and shall deposit the collections as directed by the Judicial Council.

SEC. 6. Section 3118 is added to the Family Code, to read:

3118. (a) In any contested proceeding involving child custody or visitation rights, where the court has appointed a child custody evaluator and the court determines that there is a serious allegation or allegations of child sexual abuse, the court shall require an evaluation pursuant to this section. For purposes of this section, a serious allegation of child sexual abuse means an allegation of child sexual abuse, as defined in Section 11165.1 of the Penal Code, that is based in whole or in part on

statements made by the child to law enforcement, a child welfare services agency investigator, any person required by statute to report suspected child abuse, or any other court appointed personnel, or that is supported by substantial independent corroboration as provided for in subdivision (b) of Section 3011. When an allegation of child abuse arises in any other circumstances in any proceeding involving child custody or visitation rights, the court may require an evaluator to conduct an evaluation pursuant to this section. The order appointing a child custody evaluator pursuant to this section shall provide that the evaluator have access to all juvenile court records pertaining to the child who is the subject of the evaluation. The order shall also provide that any juvenile court records or information gained from those records remain confidential and shall only be released as specified in Section 3111.

(b) The evaluator shall, at a minimum, do all of the following:

(1) Consult with the agency providing child welfare services and law enforcement regarding the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.

(2) Review and summarize the child welfare services agency file; however, no document contained in the child welfare services agency file shall be photocopied, but a summary of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, may be recorded by the evaluator, except for the identity of the reporting party. The evaluator's notes summarizing the child welfare services agency information shall be stored in a file separate from the evaluator's file and may only be released to either party under order of the court.

(3) Obtain from a law enforcement investigator all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent.

(4) Review the results of a multidisciplinary child interview team (hereafter MDIT) interview if available, or if not, or if the evaluator believes the MDIT interview is inadequate for purposes of the investigation, interview the child or request an MDIT interview, and shall wherever possible avoid repeated interviews of the child.

(5) Request a forensic medical examination of the child from the appropriate agency, or include in the report required by paragraph (6) a written statement explaining why the examination is not needed.

(6) File a confidential written report with the clerk of the court in which the custody hearing will be conducted and which shall be served on the parties or their attorneys at least 10 days prior to the hearing. This report shall not be made available other than as provided in this

subdivision. This report shall include, but is not limited to, the following:

(A) Documentation of material interviews, including any MDIT interview of the child or the evaluator, written documentation of interviews with both parents by the evaluator, and interviews with other witnesses who provided relevant information.

(B) A summary of any law enforcement investigator's investigation, including information obtained from the criminal background check of the parents and any suspected perpetrator that is not a parent.

(C) Relevant background material including, but not limited to, a summary of a written report from any therapist treating the child for suspected child sexual abuse, excluding any communication subject to Section 1014 of the Evidence Code, reports from other professionals, and the results of any forensic medical examination and any other medical examination or treatment that could help establish or disprove whether the child has been the victim of sexual abuse.

(D) The evaluator's written recommendations regarding the therapeutic needs of the child and how to ensure the safety of the child.

(E) A summary of the following information: whether the child and his or her parents are or have been the subject of a child abuse investigation and the disposition of that investigation; the name, location, and phone number of the children's services worker; the status of the investigation and the recommendations made or anticipated to be made regarding the child's safety; and any dependency court orders or findings that might have a bearing on the custody dispute.

(F) Any other information the evaluator believes would be helpful to the court in determining what is in the best interests of the child.

(c) If the evaluator obtains information as part of a family court mediation, that information shall be maintained in the family court file, which shall not be subject to subpoena by either party. If, however, the members of the family are the subject of an ongoing child welfare services investigation, or the evaluator has made a child welfare services referral, the evaluator shall so inform the family law judicial officer in writing and this information shall become part of the family law file. This subdivision shall not be construed to authorize or require a mediator to disclose any information not otherwise authorized or required by law to be disclosed.

(d) In accordance with subdivision (d) of Section 11167 of the Penal Code, the evaluator may not disclose any information regarding the identity of any person making a report of suspected child abuse. Nothing in this section is intended to limit any disclosure of information by any agency that is otherwise required by law or court order.

(e) The evaluation standards set forth in this section represent minimum requirements of evaluation and the court shall order further

evaluation beyond these minimum requirements when necessary to determine the safety needs of the child.

(f) If the court orders an evaluation pursuant to this section, the court shall consider whether the best interest of the child requires that a temporary order be issued that limits visitation with the parent against whom the allegations have been made to situations in which a third person specified by the court is present or whether visitation will be suspended or denied in accordance with Section 3011.

(g) An evaluation pursuant to this section shall be suspended if a petition is filed to declare the child a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and all information gathered by the evaluator shall be made available to the juvenile court.

(h) This section shall not be construed to authorize a court to issue any orders in a proceeding pursuant to this division regarding custody or visitation with respect to a minor child who is the subject of a dependency hearing in juvenile court or to otherwise supersede Section 302 of the Welfare and Institutions Code.

SEC. 7. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care

facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) A judge assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, and a child custody evaluator appointed by the court pursuant to Section 3118 of the Family Code.

(L) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided

in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (K), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited

exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 8. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are

actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) A judge assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8

of the Family Code, and a child custody evaluator appointed by the court pursuant to Section 3118 of the Family Code.

(L) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(M) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (L), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 9. Section 8 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and SB 1611. 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 827 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1611, in which case Section 7 of this bill shall not become operative.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 927

An act to amend Section 27 of the Business and Professions Code, and to amend Section 11018.5 of the Government Code, relating to the Internet.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every entity specified in subdivision (b), on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information shall not include personal information including, home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

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

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

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.

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

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

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

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

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

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

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

(10) The Funeral Directors and Embalmers Program shall disclose information on its licensees, including, embalmers, funeral establishments, and funeral directors.

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

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

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

SEC. 2. Section 11018.5 of the Government Code is amended to read:

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

(b) The Department of Real Estate shall disclose information on its licensees, including real estate brokers and agents, on the Internet that is in compliance with the department's public record access guidelines. In instances where licensees use their home address as a mailing address, the department shall allow licensees to provide a post office box number or other alternate address where correspondence may be received. Notwithstanding the foregoing, real estate brokers shall provide the department with the actual address of their place or places of business as required by Section 10162 of the Business and Professions Code.

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

CHAPTER 928

An act to amend Sections 395 , 395.01, and 395.03 of the Military and Veterans Code, relating to veterans.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 395 of the Military and Veterans Code is amended to read:

395. (a) Any public employee who is a member of the reserve corps of the Armed Forces of the United States or of the National Guard or the Naval Militia is entitled to a temporary military leave of absence as provided by federal law while engaged in military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises or like activity, providing that the period of ordered duty does not exceed 180 calendar days, including time involved in going to and returning from that duty.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, provide paid military leave of absence for periods of inactive duty training.

(c) The employee has an absolute right to be restored to the former office or position and status formerly had by him or her in the same locality and in the same office, board, commission, agency, or institution of the public agency upon the termination of temporary military duty. If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated to a position of like seniority, status, and pay if a position exists, or if no position exists the employee shall have the same rights and privileges that he or she would have had if he or she had occupied the position when it ceased to exist and had not taken temporary military leave of absence.

(d) Any public employee who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the date upon which a temporary military leave of absence begins, shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that

the employee would have enjoyed had he or she not been absent therefrom; excepting that an uncompleted probationary period, if any, in the public agency, must be completed upon reinstatement as provided by law or rule of the agency. For the purposes of this section, in determining the one year of service in a public agency all service of the employee in recognized military service shall be counted as public agency service.

(e) If this section is in conflict with a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 395.01 of the Military and Veterans Code is amended to read:

395.01. (a) Any public employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises, or like activity as such member, provided that the period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, and who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day on which the absence begins, is entitled to receive his or her salary or compensation as a public employee for the first 30 calendar days of any such absence. Pay for those purposes may not exceed 30 days in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of a public employee in the recognized military service shall be counted as public agency service.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, pay an employee during a period of inactive duty training.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4, of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 395.03 of the Military and Veterans Code is amended to read:

395.03. No more than the pay for a period of 30 calendar days shall be allowed under the provisions of Section 395.01 or 395.02 for any one

military leave of absence or during any one fiscal year, except as otherwise authorized by resolution of the legislative body of a public agency or as provided in a memorandum of understanding reached with an employee organization pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code.

CHAPTER 929

An act to amend Section 4850 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 2. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city,

county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Custody assistants employed on a regular, full-time basis by a county of the first class.

(11) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose

functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 3. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(12) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 4. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall

become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Custody assistants employed on a regular, full-time basis by a county of the first class.

(11) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(12) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(13) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 5. Section 2 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by both this bill and AB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) AB 1883 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after AB 1124, in which case Sections 1, 3, and 4 of this bill shall not become operative.

SEC. 6. Section 3 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill and AB 1883. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) AB 1124 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after AB 1883, in which case Sections 1, 2, and 4 of this bill shall not become operative.

SEC. 7. Section 4 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill, AB 1124, and AB 1883. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 4850 of the Labor Code, and (3) this bill is enacted after AB 1124 and AB 1883, in which case Sections 1, 2, and 3 of this bill shall not become operative.

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CHAPTER 930

An act to amend Sections 8714, 8714.5, 8714.7, and 8715 of the Family Code, and to amend Section 358.1 of the Welfare and Institutions Code, relating to adoption.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

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

SECTION 1. Section 8714 of the Family Code is amended to read:

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (a).

(d) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(f) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

SEC. 2. Section 8714.5 of the Family Code is amended to read:

8714.5. (a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the county clerk shall immediately notify the State Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties , shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioner shall notify the court of any petition for adoption. The guardianship proceeding shall be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

(h) For purposes of this section, ''relative'' means an adult who is related to the child or the child's half-sibling by blood or affinity, including all relatives whose status is preceded by the words ''step,'' ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

SEC. 3. Section 8714.7 of the Family Code is amended to read:

8714.7. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the

children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, and adoptive parents.

(b) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.

(1) Except as provided in paragraph (2), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(C) Provisions for the sharing of information about the child in the future.

(2) The terms of any postadoption contact agreement entered into pursuant to a petition filed under Section 8714 shall be limited to the sharing of information about the child unless the child has an existing relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed under Section 8714 or 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 2001, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement.

SEC. 4. Section 8715 of the Family Code is amended to read:

8715. (a) The department or licensed adoption agency, whichever is a party to or joins in the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half-siblings.

(c) Where a petition for adoption has been filed with a postadoption contact agreement pursuant to Section 8714.7, the report shall address whether the postadoption contact agreement has been entered into

voluntarily, and whether it is in the best interests of the child who is the subject of the petition.

(d) The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

SEC. 5. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(e) Whether the parent has been advised of his or her option to participate in adoption planning, including the option to enter into a postadoption contact agreement as described in Section 8714.7 of the Family Code, and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(f) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 6. The State Department of Social Services shall adopt regulations as necessary to implement the provisions of this act no later than July 1, 2001.

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 931

An act to amend Sections 739.3 and 2890 of, and to add Section 2890.1 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 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 Legislature has previously stated its intent that telephone consumers only be billed for charges they have authorized and that those charges be clearly identified. The Legislature has also previously identified specific rules regarding the billing company, and the person, corporation, and billing agent for any products or services on a consumer's telephone bill. Those rules focus on issues relating to description of the product, identification of charges, dispute resolution processes, provision of a toll-free contact number, and means for resolving billing disputes and complaint procedures.

(b) Until January 1, 2001, only ''communications-related'' products and services may be charged on a telephone bill, though the Public Utilities Commission is permitted to allow billing telephone companies to include commission-specified ''noncommunications'' products and services on a separate bill within the telephone bill envelope. On and after January 1, 2001, only charges for products and services authorized by the subscriber may be on the same telephone bill.

(c) The Public Utilities Commission initiated Rulemaking 00-02-004 to establish consumer rights and consumer protection rules applicable to all telecommunications utilities. The rulemaking seeks to establish consumer rights regarding disclosure, choice, privacy, public participation, oversight and enforcement, and accurate bills and redress.

(d) The Legislature believes that Rulemaking 00-02-004 provides an excellent opportunity for the Public Utilities Commission to establish any additional safeguards that may be needed for telecommunications companies that charge subscriber-authorized noncommunications-related products and services on their telephone bill.

SEC. 2. Section 739.3 of the Public Utilities Code is amended to read:

739.3. (a) The commission shall develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by transfer payments to small independent telephone corporations serving rural and small metropolitan areas. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies.

(b) For purposes of this section, small independent telephone corporations means those independent telephone corporations serving rural areas, as determined by the commission.

(c) The commission shall develop, implement, and maintain a suitable, competitively neutral, and broadbased program to establish a fair and equitable local rate support structure aided by transfer payments to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission. The commission shall develop and implement the program on or before October 1, 1996. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies. The commission shall structure the program required by this subdivision so that the amount of each transfer payment reasonably equals the value of the benefits of universal service to the transferor entity and its subscribers. Except as otherwise explicitly provided, this subdivision does not limit the manner in which the commission collects and disburses funds, and does not limit the manner in which it may include or exclude the revenue of transferring entities in structuring the program.

(d) Not later than December 15, 1996, the commission shall report to the Governor, the Joint Legislative Budget Committee, and the fiscal committees of the Senate and the Assembly regarding the results of the commission's universal telephone service proceeding and recommended program. The Legislature may, at its discretion, assess whether any identified problems in the universal telephone service program are issues that warrant modifications to this chapter during the 1997–98 Regular Session.

(e) Not later than December 1, 1999, the commission shall prepare a report to the Governor, the Joint Legislative Budget Committee, and the fiscal committees of the Senate and the Assembly regarding the status of the universal telephone service fund and program. The report shall consider all of the following:

(1) The effectiveness of the universal service funding mechanism in establishing equitable and nondiscriminatory contributions by all telecommunications providers to support the preservation and advancement of universal service.

(2) The extent to which the current universal telephone service program provides the continued availability of current

telecommunications and information services on a competitively neutral basis, while providing adequate flexibility for provision of new services and network capabilities as technology advances.

(3) The success of the universal telephone service program in ensuring universal access, in rural and high cost areas, to services that are reasonably comparable, both in content and cost, to those services provided in urban areas.

(f) The commission shall investigate subsidy reduction, or elimination of subsidies in service areas with demonstrated competition, and report on service area auctions for high cost areas as part of the commission's universal telephone service program report required in accordance with subdivision (e).

(g) Not later than February 1, 2001, the Legislative Analyst shall conduct a review of the state's universal telephone service program, including subsequent modifications as appropriate, and report to the Governor and the Legislature as part of the Legislative Analyst's analysis of the Budget Bill to be issued in February 2001. In evaluating the program, the Legislative Analyst shall consider all of the following:

(1) The findings of the report required by subdivision (e).

(2) An assessment of whether any identified problems are issues that affect the continued implementation of this chapter or issues that warrant revisions of statutes or regulations.

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

SEC. 3. Section 2890 of the Public Utilities Code, as amended by Section 65.5 of Chapter 1005 of the Statutes of 1999, is amended to read:

2890. (a) A telephone bill may only contain charges for communications-related products and services, including, but not limited to, wired and wireless communications service, Internet access, video service, information service, telephone equipment that is connected to a telecommunications network, and cable set top boxes. The commission may permit a billing telephone company to include in the same envelope with a subscriber's telephone bill, a separate bill for noncommunications-related products and services. The commission may also specify the kinds of noncommunications-related products and services that may be billed in this manner.

(b) A telephone bill, and a bill for noncommunications-related products and services that is included in the same envelope as a telephone bill, may only contain charges for products or services, the purchase of which the subscriber has authorized.

(c) When a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the

nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders may not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(d) The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

(e) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company may not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill, or on a bill for noncommunications-related products and services that is included in the same envelope as a telephone bill, shall do all of the following:

(A) Include, or cause to be included, in the bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name of the party responsible for generating the charge, a toll-free telephone number of the entity responsible for resolving disputes regarding the charge, and a description of the manner in which a dispute regarding the charge may be addressed. Each telephone bill shall include the appropriate telephone numbers of the commissions that a customer may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges and to provide the appropriate addresses to which written questions or complaints may be sent. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation or billing agent.

(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not

authorized by the subscriber. In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. If recurring charges arise from the use of those subscriber-initiated products or services, the recurring charges are subject to this section.

(f) If an entity responsible for generating a charge on a telephone bill, or on a bill for noncommunications-related products and services that is included in the same envelope as a telephone bill, receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

(g) For purposes of this section, ''billing agent'' is the clearinghouse or billing aggregator.

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

SEC. 4. Section 2890 of the Public Utilities Code, as amended by Section 65.7 of Chapter 1005 of the Statutes of 1999, is amended to read:

2890. (a) A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.

(b) When a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders may not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(c) The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

(d) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company may not bill for a person, corporation, or billing

agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall do all of the following:

(A) Include, or cause to be included, in the telephone bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name of the party responsible for generating the charge and a toll-free telephone number or other no cost means of contacting the entity responsible for resolving disputes regarding the charge and a description of the manner in which a dispute regarding the charge may be addressed. Each telephone bill shall include the appropriate telephone number of the commission that a subscriber may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges and to provide the appropriate addresses to which written questions or complaints may be sent. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation or billing agent.

(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section.

(e) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

(f) For purposes of this section, ''billing agent'' is the clearinghouse or billing aggregator.

(g) This section shall become operative on July 1, 2001.

SEC. 5. Section 2890.1 is added to the Public Utilities Code, to read:

2890.1. The commission shall, on or before July 1, 2001, adopt any additional rules it determines to be necessary to implement the billing safeguards of Section 2890, for the inclusion of noncommunications-related products and services in telephone bills.

SEC. 6. (a) On or before January 1, 2002, the Public Utilities Commission shall prepare and submit to the Governor and the Legislature a report on the feasibility of establishing rural telephone cooperatives or other alternative service configurations, or both, to promote rural telephone service, including voice and data transmission service, in the state. The commission shall include in the report all of the following:

(1) Costs to California ratepayers, telecommunications carriers, and cooperative members of all feasible alternatives to rural telephone service.

(2) Sources of support for grants, loans, or federal program moneys and how these sources are currently funded.

(3) The implications for ratepayers of, and investors in, public utilities, if rural telephone cooperatives, or other alternative service configurations, are permitted to expand the scope of their activities beyond a role as providers of last resort for unserved rural communities.

(4) The number of communities or areas of the state that contain over 20 families that are not served by traditional telephone service.

(5) Recommendations concerning appropriate legislation.

(b) The term ''alternative service configurations'' includes, but is not limited to, all of the following:

(1) Combining federal sources of funding with local subsidies for construction of telecommunications infrastructure.

(2) Designing new sources of state funding similar to existing state high-cost funds pursuant to paragraphs (1) and (2) of subdivision (a) of Section 270 of the Public Utilities Code.

(3) Other options being considered by other states or the federal government to extend telephone service to unserved areas.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 932

An act to add Article 10 (commencing with Section 890) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. (a) The Legislature finds and declares that statutes and regulations have imposed programs and fees, such as energy efficiency, low-income assistance, and weatherization programs, upon regulated gas utilities that have public policy goals not directly related to the provision of gas service. The costs borne by gas utilities to provide these programs have historically been recovered through gas rates established by the Public Utilities Commission.

(b) The Legislature also finds and declares that, due to changes in state and federal regulations, the monopolies for the provisions of gas service in California that effectively permitted the commission to allocate the cost of these public policy programs to all gas users are being replaced with competitive markets. Gas customers may continue to take advantage of the deregulation of the gas industries by obtaining service from nonregulated gas providers who are not required to provide these programs. Thus, these customers do not pay the costs of public policy programs.

(c) It is the intent of the Legislature to continue public policy programs in an equitable manner that will ensure that all gas consumers will provide a fair share of adequate funding for these programs without increasing the current funding levels for these programs.

SEC. 2. Article 10 (commencing with Section 890) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 10. Natural Gas Surcharge

890. (a) On and after January 1, 2001, there shall be imposed a surcharge on all natural gas consumed in this state. The commission shall establish a surcharge to fund low-income assistance programs required by Sections 739.1, 739.2, and 2790 and cost-effective energy efficiency and conservation activities and public interest research and development authorized by Section 740 and not adequately provided by the competitive and regulated markets. Upon implementation of this article, funding for those programs shall be removed from the rates of gas utilities.

(b) (1) Except as specified in Section 898, a public utility gas corporation, as defined in subdivision (b) of Section 891, shall collect the surcharge imposed pursuant to subdivision (a) from any person consuming natural gas in this state who receives gas service from the public utility gas corporation.

(2) A public utility gas corporation is relieved from liability to collect the surcharge insofar as the base upon which the surcharge is imposed is represented by accounts which have been found to be worthless and charged off in accordance with generally accepted accounting principles. If the public utility gas corporation has previously paid the amount of the surcharge it may, under regulations prescribed by the State Board of Equalization, take as a deduction on its return the amount found to be worthless and charged off. If any accounts are thereafter collected in whole or in part, the surcharge so collected shall be paid with the first return filed after that collection. The commission may by regulation promulgate other rules with respect to uncollected or worthless accounts as it determines to be necessary to the fair and efficient administration of this part.

(c) Except as specified in Section 898, all persons consuming natural gas in this state that has been transported by an interstate pipeline, as defined in subdivision (c) of Section 891, shall be liable for the surcharge imposed pursuant to subdivision (a).

(d) The commission shall annually determine the amount of money required for the following year to administer this chapter and fund the natural gas related programs described in subdivision (a) for the service territory of each public utility gas corporation.

(e) The commission shall annually establish a surcharge rate for each class of customer for the service territory of each public utility gas corporation. A customer of an interstate gas pipeline, as defined in Section 891, shall pay the same surcharge rate as the customer would pay if the customer received service from the public utility gas corporation in whose service territory the customer is located. The commission shall determine the total volume of retail natural gas transported within the service territory of a utility gas provider, that is not subject to exemption pursuant to Section 896, for the purpose of establishing the surcharge rate.

(f) The commission shall allocate the surcharge for gas used by all customers, including those customers who were not subject to the surcharge prior to January 1, 2001.

(g) The commission shall notify the State Board of Equalization of the surcharge rate for each class of customer served by an interstate pipeline in the service territory of a public utility gas corporation.

(h) The State Board of Equalization shall notify each person who consumes natural gas delivered by an interstate pipeline of the surcharge

rate for each class of customer within the service territory of a public utility gas corporation.

(i) The surcharge imposed pursuant to subdivision (a) shall be in addition to any other charges for natural gas sold or transported for consumption in this state. Effective on July 1, 2001, the surcharge imposed pursuant to this article shall be identified as a separate line item on the bill of a customer of a public utility gas corporation.

(j) Notwithstanding subdivision (a), public utility gas corporations shall continue to collect in rates those costs of programs described in subdivision (a) of Section 890 that are uncollected prior to the operative date of this article.

891. (a) ''Gas utility'' means any public utility gas corporation or interstate pipeline as defined in this section.

(b) ''Public utility gas corporation'' means a public utility gas corporation as defined in Section 216.

(c) ''Interstate pipeline'' means any entity that owns or operates a natural gas pipeline delivering natural gas to consumers in the state and is subject to rate regulation by the Federal Energy Regulatory Commission.

(d) Each gas utility shall notify the State Board of Equalization of its status under this section. Each person who consumes natural gas delivered by an interstate pipeline shall annually register with the State Board of Equalization. The State Board of Equalization may require any documentation that it determines to be necessary to implement this article.

892. The revenue from the surcharge imposed pursuant to this article and collected by a public utility gas corporation shall be paid to the State Board of Equalization in the form of remittances. Persons consuming natural gas delivered by an interstate pipeline shall pay the surcharge to the State Board of Equalization in the form of remittances. The board shall transmit the payments to the Treasurer who shall deposit the payments in the Gas Consumption Surcharge Fund, which is hereby created in the State Treasury.

892.1. The surcharges imposed by this part and the amounts thereof required to be collected by public utility gas corporations are due quarterly on or before the last day of the month next succeeding each calendar quarter.

892.2. On or before the last day of the month following each calendar quarter, a return for the preceding quarterly period shall be filed with the State Board of Equalization in such form as the board may prescribe. A return shall be filed by every public utility gas corporation, and by every person consuming, as defined in this article, natural gas transported by a provider other than the public utility gas corporation.

The return shall be signed by the person required to file the return or by his or her duly authorized agent.

893. The State Board of Equalization shall administer the surcharge imposed pursuant to this article in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

894. The State Board of Equalization may collect any unpaid surcharge imposed pursuant to this article.

895. Notwithstanding Section 13340 of the Government Code, funds in the Gas Consumption Surcharge Fund are continuously appropriated, without regard to fiscal years, as follows:

(a) To the commission or an entity designated by the commission to fund programs described in subdivision (a) of Section 890.

(b) To pay the commission for its costs in carrying out its duties and responsibilities under this article.

(c) To pay the State Board of Equalization for its costs in administering this article.

896. ''Consumption'' means the use or employment of natural gas. Consumption does not include the use or employment of natural gas to generate power for sale, the sale or purchase of natural gas for resale to end users, the sale or use of gas for enhanced oil recovery, natural gas utilized in cogeneration technology projects to produce electricity, or natural gas that is produced in California and transported on a proprietary pipeline. Consumption does not include the consumption of natural gas which this state is prohibited from taxing under the United States Constitution or the California Constitution.

897. Nothing in this article impairs the rights and obligations of parties to contracts approved by the commission, as the rights and obligations were interpreted as of January 1, 1998.

898. Notwithstanding Section 890, a municipality, district, or public agency that offers in published tariffs home weatherization services, rate assistance for low-income customers, or programs similar to those described in subdivision (a) of Section 890, shall not be required to collect a surcharge pursuant to this article from customers within its service territory. A municipality, district, or public agency shall be required to collect a surcharge pursuant to this article from customers served by the municipality, district, or public agency outside of its service territory unless the commission determines that the entity offers those customers services similar to those offered by gas utilities as described in subdivision (a) of Section 890.

899. Sections 890 and 892 do not apply to any gas customer of a municipality, district, or public agency exempted by Section 898 from collecting a surcharge.

900. The commission shall determine the most efficient and cost-effective way to provide programs pursuant to Sections 739.1, 739.2, and 2790 in a consistent manner statewide by utility provider service territory. In determining the most cost-effective way to provide service that benefits persons eligible for low-income programs, the commission shall consider factors, including, but not limited to, outreach efforts to reach the targeted population and the types of discounts and services that should be provided by each utility. On or before July 1, 2001, the commission shall develop and implement efficient and cost-effective programs pursuant to Sections 739.1, 739.2, and 2790. The commission may conduct compliance audits to ensure compliance with any commission order or resolution relating to the implementation of programs pursuant to Sections 739.1, 739.2, and 2790, and may conduct financial audits.

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 933

An act to amend Sections 11322.6, 11322.61, 11322.9, and 11451.5 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11322.6 of the Welfare and Institutions Code is amended to read:

11322.6. The welfare-to-work plan developed by the county welfare department and the participant pursuant to this article shall provide for welfare-to-work activities. Welfare-to-work activities may include, but are not limited to, any of the following:

(a) Unsubsidized employment.

(b) Subsidized private sector employment.

(c) Subsidized public sector employment.

(d) Work experience, which means public or private sector work that shall help provide basic job skills, enhance existing job skills in a position related to the participant's experience, or provide a needed community service that will lead to employment. Unpaid work experience shall be limited to 12 months, unless the county welfare department and the recipient agree to extend this period by an amendment to the welfare-to-work plan. The county welfare department shall review the work experience assignment as appropriate and make revisions as necessary to ensure that it continues to be consistent with the participant's plan and effective in preparing the participant to attain employment.

(e) On-the-job training.

(f) (1) Grant-based on-the-job training, which means public or private sector employment or on-the-job training in which the recipient's cash grant, or a portion thereof, or the aid grant savings resulting from employment, or both, is diverted to the employer as a wage subsidy to partially or wholly offset the payment of wages to the participant, so long as the total amount diverted does not exceed the family's maximum aid payment. A county shall not assign a participant to grant-based on-the-job training unless and until the participant has voluntarily agreed to participate in grant-based on-the-job training by executing a voluntary consent form, which shall be developed by the department.

(2) Grant-based on-the-job training shall include community service positions pursuant to Section 11322.9.

(3) Any portion of a wage from employment that is funded by the diversion of a recipient's cash grant, or the grant savings from employment pursuant to this subdivision, or both, shall not be exempt under Section 11451.5 from the calculation of the income of the family for purposes of subdivision (a) of Section 11450.

(g) Supported work or transitional employment, which means forms of grant-based on-the-job training in which the recipient's cash grant, or a portion thereof, or the aid grant savings from employment, is diverted to an intermediary service provider, to partially or wholly offset the payment of wages to the participant.

(h) Work-study.

(i) Self-employment.

(j) Community service.

(k) Adult basic education, which shall include reading, writing, arithmetic, high school proficiency, or general educational development certificate of instruction, and English-as-a-second-language. Participants under this subdivision shall be referred to appropriate service providers that include, but are not limited to, educational programs operated by school districts or county offices of education that have contracted with the Superintendent of Public Instruction to provide

services to participants pursuant to Section 33117.5 of the Education Code.

(*l*) Job skills training directly related to employment.

(m) Vocational education and training, including, but not limited to, college and community college education, adult education, regional occupational centers, and regional occupational programs.

(n) Job search and job readiness assistance, which means providing the recipient with training to learn job seeking and interviewing skills, to understand employer expectations, and learn skills designed to enhance an individual's capacity to move toward self-sufficiency.

(o) Education directly related to employment.

(p) Satisfactory progress in secondary school or in a course of study leading to a certificate of general educational development, in the case of a recipient who has not completed secondary school or received such a certificate.

(q) Mental health, substance abuse, and domestic violence services, described in Sections 11325.7 and 11325.8 and Article 7.5 (commencing with Section 11495), that are necessary to obtain and retain employment.

(r) Other activities necessary to assist an individual in obtaining unsubsidized employment.

Assignment to an educational activity identified in subdivisions (k), (m), (o), and (p) is limited to those situations in which the education is needed to become employed.

SEC. 2. Section 11322.61 of the Welfare and Institutions Code is amended to read:

11322.61. (a) Except as provided in subdivisions (c) and (d) of Section 11327.5, if there is any interruption in receipt of income for an employee in a grant-based on-the-job training program, as provided for pursuant to subdivision (j) of Section 11322.6, that is caused by an employer's conduct, the county shall ensure that a recipient receives 100 percent of the maximum aid payment, not counting the unpaid wages, that the assistance unit is eligible to receive. The payment shall be made as a supplemental grant payment. The county shall act to recover from the employer any amount of the grant diverted to the employer that was not paid as wages to the recipient. The agreement between the county and the employer pertaining to grant-based on-the-job training shall state that the county will take action to collect from the employer the amount of the grant diverted to the employer that was not paid as wages to the recipient.

(b) Pursuant to subdivision (f) of Section 11322.6, counties using grant-based on-the-job training shall monitor employers participating in grant-based on-the-job training, and shall cancel the participation of employers who demonstrate, over time, any of the following:

(1) An unwillingness to hire recipients who have participated in grant-based on-the-job training with that employer.

(2) An inability to provide job skills that enable participants to obtain nonsubsidized employment with other employers.

SEC. 3. Section 11322.9 of the Welfare and Institutions Code is amended to read:

11322.9. (a) In accordance with the requirements of this section:

(1) Counties may provide for community service activities for individuals who have not completed the period specified in subdivision (a) of Section 11454 and are not employed in unsubsidized employment, sufficient to meet the hours of participation required by Section 11322.8.

(2) Counties shall provide for community service activities for individuals who have completed the period as specified in subdivision (a) of Section 11454, who cannot find unsubsidized employment sufficient to meet the hours of participation required by Section 11322.8, and the county certifies that no job is currently available to fulfill the hours required by Section 11322.8, and who continue to meet the financial eligibility criteria for aid under this chapter.

(b) Community service activities shall meet all of the following criteria:

(1) Be performed in the public and private nonprofit sector.

(2) Provide participants with job skills that can lead to unsubsidized employment.

(3) Comply with the antidisplacement provisions contained in Section 11324.6.

(c) Participants in community service activities shall do all of the following:

(1) Participate in a community service activity for the number of hours required by Section 11322.8, unless fewer hours of community service participation are required by federal law.

(2) Participate in other work activities for the number of hours equal to the difference between the hours of participation in community service and the number of hours of participation required under Section 11322.8.

(d) The county plan pursuant to Section 10531 shall include a component, developed by the county in collaboration with local private sector employers, local education agencies, county welfare departments, organized labor, recipients of aid under this chapter, and government and community-based organizations providing job training and economic development, in order to identify all of the following:

(1) Unmet community needs that could be met through community service activities.

(2) The target population to be served.

(3) Entities responsible for project development, fiscal administration, and case management services.

(4) The terms of community service activities, that, to the extent feasible, shall be temporary and transitional, and not permanent.

(5) Supportive efforts, including job search, education, and training, which shall be provided to participants in community service activities.

(6) If the county intends to include grant-based on-the-job training in its community service plan, the process by which the county will comply with the voluntary consent form requirement established in subdivision (f) of Section 11322.6, including a list of the languages in which the consent form will be available.

(e) Aid under this chapter for any participant who fails to comply with the requirements of this section without good cause shall be reduced in accordance with Section 11327.5.

(f) Child care as a supportive service shall be provided to participants in community service activities pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, and Section 11323.2. Other supportive services may be provided by the county at the county's option. However, if the county does not provide mental health services pursuant to Section 11325.7, the county shall indicate in its county plan under Chapter 1.3 (commencing with Section 10530) how mental health services needed by participants will be made available during participation in a community service job.

SEC. 4. Section 11451.5 of the Welfare and Institutions Code is amended to read:

11451.5. (a) Notwithstanding Section 11008 and except as provided by subdivision (f) of Section 11322.6, the following amounts shall be exempt from the calculation of the income of the family for purposes of subdivision (a) of Section 11450:

(1) If disability-based unearned income does not exceed two hundred twenty-five dollars ($225), both of the following amounts:

(A) All disability-based unearned income plus any amount of not otherwise exempt earned income equal to the amount of the difference between the amount of disability-based unearned income and two hundred twenty-five dollars ($225).

(B) Fifty percent of all not otherwise exempt earned income in excess of the amount applied to meet the differential applied in subparagraph (A).

(2) If disability-based unearned income exceeds two hundred twenty-five dollars ($225), both of the following amounts:

(A) All of the first two hundred twenty-five dollars ($225) in disability-based unearned income.

(B) Fifty percent of all earned income.

(b) For purposes of this section:

(1) Earned income means gross income received as wages, salary, employer provided sick leave benefits, commissions, or profits from activities such as a business enterprise or farming in which the recipient is engaged as a self-employed individual or as an employee.

(2) Disability-based unearned income means State Disability Insurance benefits, private disability insurance benefits, Temporary Workers' Compensation benefits, and social security disability benefits.

(3) Unearned income means any income not described in paragraph (1) or (2).

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 934

An act to add Chapter 5 (commencing with Section 13810) to Division 3 of the Insurance Code, relating to insurance.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

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

(a) Insurance policies from the slavery era have been discovered in the archives of several insurance companies, documenting insurance coverage for slaveholders for damage to or death of their slaves, issued by a predecessor insurance firm. These documents provide the first evidence of ill-gotten profits from slavery, which profits in part capitalized insurers whose successors remain in existence today.

(b) Legislation has been introduced in Congress for the past 10 years demanding an inquiry into slavery and its continuing legacies.

(c) The Insurance Commissioner and the Department of Insurance are entitled to seek information from the files of insurers licensed and doing business in this state, including licensed California subsidiaries of international insurance corporations, regarding insurance policies issued to slaveholders by predecessor corporations. The people of California are entitled to significant historical information of this nature.

SEC. 2. Chapter 5 (commencing with Section 13810) is added to Division 3 of the Insurance Code, to read:

CHAPTER 5. SLAVERY ERA INSURANCE POLICIES

13810. The commissioner shall request and obtain information from insurers licensed and doing business in this state regarding any records of slaveholder insurance policies issued by any predecessor corporation during the slavery era.

13811. The commissioner shall obtain the names of any slaveholders or slaves described in those insurance records, and shall make the information available to the public and the Legislature.

13812. Each insurer licensed and doing business in this state shall research and report to the commissioner with respect to any records within the insurer's possession or knowledge relating to insurance policies issued to slaveholders that provided coverage for damage to or death of their slaves.

13813. Descendants of slaves, whose ancestors were defined as private property, dehumanized, divided from their families, forced to perform labor without appropriate compensation or benefits, and whose ancestors' owners were compensated for damages by insurers, are entitled to full disclosure.

CHAPTER 935

An act to add Article 4 (commencing with Section 44689.1) to Chapter 3.1 of Part 25 of the Education Code, relating to school administrators, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

I am signing Assembly Bill No. 2036. However, I am deleting the $1 million General Fund appropriation to the State Department of Education to administer the grant program proposed by this bill.

This bill would establish a grant program, to be administered by the Superintendent of Public Instruction, that would provide training to school administrators to assist them in evaluating the performance of certified school employees.

The cost of the grant program was not included in the 2000 Budget Act. I will consider an appropriation to fund the grant program among competing priorities during the annual budget process.

GRAY DAVIS, Governor

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

SECTION 1. Article 4 (commencing with Section 44689.1) is added to Chapter 3.1 of Part 25 of the Education Code, to read:

Article 4. Evaluation of Certificated Employees

44689.1. (a) The Legislature finds and declares all of the following:

(1) Strong schoolsite administrators play a pivotal role in the life of a school and are essential for successful schools. The principal, as leader of the schoolsite educational team, is the most effective agent for bringing about educational improvement.

(2) An important component of effective leadership is evaluation of employees.

(3) Training in effective evaluation strategies and techniques that supports instructional improvement is essential.

(b) It is the intent of the Legislature that administrators assigned to evaluate certificated employees possess certain demonstrated competencies in assessment of employees.

44689.2. (a) The Superintendent of Public Instruction shall, with the approval of the State Board of Education, award a grant to any eligible applicant school district, county office of education, or charter school, for the purpose of providing necessary administrator training pursuant to this article. The grant shall consist of an amount not to exceed four hundred dollars ($400) per administrator scheduled to receive training as set forth in this article.

(b) The Superintendent of Public Instruction shall administer this article and shall, where necessary, implement actions of the State Board of Education governing the implementation of this article.

(c) (1) Programs funded pursuant to this section shall include all of the following:

(A) Techniques and strategies for successful supervision, observation, diagnosis, and conferencing with teachers that support instructional improvement.

(B) Documentation and writing techniques necessary for effective written evaluations.

(C) A knowledge of evaluation, assessment, and dismissal procedures pursuant to Article 11 (commencing with Section 44660) of Chapter 3 and Article 3 (commencing with Section 44930) of Chapter 4.

(2) The programs shall provide sufficient flexibility to meet the needs of the state's diverse school districts.

(3) The programs shall set forth the sources for appropriate professional development, including, but not limited to, the Governor's

Principal Leadership Institute pursuant to Chapter 12 (commencing with Section 92855) of Part 57, onsite training offered by practitioners and consulting experts, and academies offered by professional associations.

(d) This article shall not be implemented during any fiscal year for which funds have not been appropriated for these purposes.

SEC. 2. The sum of one million dollars ($1,000,000) is hereby appropriated from the General Fund to the State Department of Education for purposes of awarding grants to school districts, county offices of education, and charter schools to provide administrator training pursuant to Article 4 (commencing with Section 44689.1) of Chapter 3.1 of Part 25 of the Education Code.

CHAPTER 936

An act to add Chapter 8.2 (commencing with Section 25720) to Division 15 of the Public Resources Code, relating to fuel resources.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 8.2 (commencing with Section 25720) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.2. STRATEGIC FUEL RESERVE

25720. (a) By January 31, 2002, the commission shall examine the feasibility, including possible costs and benefits to consumers and impacts on fuel prices for the general public, of operating a strategic fuel reserve to insulate California consumers and businesses from substantial short-term price increases arising from refinery outages and other similar supply interruptions. In evaluating the potential operation of a strategic fuel reserve, the commission shall consult with other state agencies, including, but not limited to, the State Air Resources Board.

(b) The commission shall examine and recommend an appropriate level of reserves of fuel, but in no event may the reserve be less than the amount of refined fuel that the commission estimates could be produced by the largest California refiner over a two week period. In making this examination and recommendation, the commission shall take into account all of the following:

(1) Inventories of California-quality fuels or fuel components reasonably available to the California market.

(2) Current and historic levels of inventory of fuels.

(3) The availability and cost of storage of fuels.

(4) The potential for future supply interruptions, price spikes, and the costs thereof to California consumers and businesses.

(c) The commission shall evaluate a mechanism to release fuel from the reserve that permits any customer to contract at any time for the delivery of fuel from the reserve in exchange for an equal amount of fuel that meets California specifications and is produced from a source outside of California that the customer agrees to deliver back to the reserve within a time period to be established by the commission, but not longer than six weeks.

(d) The commission shall evaluate reserve storage space from existing facilities.

(e) The commission shall evaluate a reserve operated by an independent operator that specializes in purchasing and storing fuel, and is selected through competitive bidding.

(f) (1) Not later than January 31, 2002, the commission and the State Air Resources Board, in consultation with the other state and local agencies the commission deems necessary, shall develop and adopt recommendations for the Governor and Legislature on a California Strategy to Reduce Petroleum Dependence.

(2) The strategy shall include a base case forecast by the commission of gasoline, diesel, and petroleum consumption in years 2010 and 2020 based on current best estimates of economic and population growth, petroleum base fuel supply and availability, vehicle efficiency, and utilization of alternative fuels and advanced transportation technologies.

(3) The strategy shall include recommended statewide goals for reductions in the rate of growth of gasoline and diesel fuel consumption and increased transportation energy efficiency and utilization of nonpetroleum based fuels and advanced transportation technologies, including alternative fueled vehicles, hybrid vehicles, and high fuel efficiency vehicles.

(g) The studies required by this section shall be conducted in conjunction with any other studies required by acts enacted during the 2000 portion of the 1999–2000 Regular Session dealing with gasoline prices.

25721. The commission shall report its findings and recommendations to the Governor, the Legislature, and the Attorney General by January 31, 2002. If the commission finds that it would be feasible to operate a strategic gas reserve to insulate California consumers and businesses from substantial, short-term price increases arising from refinery outages or other similar supply interruptions, the

commission shall request specific statutory authority and funding for establishment of a reserve.

CHAPTER 937

An act to amend Sections 7660, 7662, 8801.3, 8802, 8814.5, and 9102 of the Family Code, relating to adoption of children.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 7660 of the Family Code is amended to read:

7660. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who has a presumed father under Section 7611, the father shall be given notice of the adoption proceeding and have the rights provided under Part 2 (commencing with Section 8600) of Division 13, unless the father's relationship to the child has been previously terminated or determined by a court not to exist or the father has voluntarily relinquished for or consented to the adoption of the child.

SEC. 2. Section 7662 of the Family Code is amended to read:

7662. If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who does not have a presumed father under Section 7611, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not, in writing, denied paternity, waived his right to notice, or voluntarily relinquished for or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having physical or legal custody of the child, or the prospective adoptive parent, shall file a petition to terminate the parental rights of the father, unless either of the following occurs:

(a) The father's relationship to the child has been previously terminated or determined not to exist by a court.

(b) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

SEC. 3. Section 8801.3 of the Family Code is amended to read:

8801.3. A child shall not be considered to have been placed for adoption unless each of the following is true:

(a) Each birth parent placing the child for adoption has been advised of his or her rights, and if desired, has been counseled pursuant to Section 8801.5.

(b) The adoption service provider, each prospective adoptive parent, and each birth parent placing the child have signed an adoption placement agreement on a form prescribed by the department. The signing of the agreement shall satisfy all of the following requirements:

(1) Each birth parent shall have been advised of his or her rights pursuant to Section 8801.5 at least 10 days before signing the agreement, unless the adoption service provider finds exigent circumstances that shall be set forth in the adoption placement agreement.

(2) The agreement may not be signed by either the birth parents or the prospective adoptive parents until the time of discharge of the birth mother from the hospital. However, if the birth mother remains hospitalized for a period longer than the hospitalization of the child, the agreement may be signed by all parties at the time of or after the child's discharge from the hospital but prior to the birth mother's discharge from the hospital if her competency to sign is verified by her attending physician and surgeon before she signs the agreement.

(3) The birth parents and prospective adoptive parents shall sign the agreement in the presence of an adoption service provider.

(4) The adoption service provider who witnesses the signatures shall keep the original of the adoption placement agreement and immediately forward it and supporting documentation as required by the department to the department or delegated county adoption agency.

(5) The child is not deemed to be placed for adoption with the prospective adoptive parents until the adoption placement agreement has been signed and witnessed.

(6) If the birth parent is not located in this state or country, the adoption placement agreement shall be signed before an adoption service provider or, for purposes of identification of the birth parent only, before a notary or other person authorized to perform notarial acts in the state or country in which the birth parent is located. This paragraph is not applicable to intercountry adoptions, as defined in Section 8527, which shall be governed by Chapter 4 (commencing with Section 8900).

(c) The adoption placement agreement form shall include all of the following:

(1) A statement that the birth parent received the advisement of rights and the date upon which it was received.

(2) A statement that the birth parent understands that the placement is for the purpose of adoption and that if the birth parent takes no further action, on the 91st day after signing the adoption placement agreement,

the agreement shall become a permanent and irrevocable consent to the adoption.

(3) A statement that the birth parent signs the agreement having personal knowledge of certain facts regarding the prospective adoptive parents as provided in Section 8801.

(4) A statement that the adoptive parents have been informed of the basic health and social history of the birth parents.

(5) A consent to the adoption that may be revoked as provided by Section 8814.5.

(d) The adoption placement agreement shall also meet the requirements of the Interstate Compact on the Placement of Children in Section 7901.

(e) This section shall become operative on January 1, 1995.

SEC. 4. Section 8802 of the Family Code is amended to read:

8802. (a) (1) Any of the following persons who desire to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides:

(A) An adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(B) A person named in the will of a deceased parent as an intended adoptive parent where the child has no other parent.

(C) A person with whom a child has been placed for adoption.

(D) A legal guardian who has been the child's legal guardian for more than one year. However, if the parent nominated the guardian for a purpose other than adoption for a specified time period, or if the guardianship was established pursuant to Section 360 of the Welfare and Institutions Code, the guardianship shall have been in existence for not less than three years.

(2) If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(f) This section shall become operative on January 1, 1995.

SEC. 5. Section 8814.5 of the Family Code is amended to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 90 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, in cases where the birth parent or parents have not regained custody, or the birth parent or parents have failed to make efforts to exercise their rights under subdivision (b) of Section 8815, a written statement reinstating the original consent may be signed and delivered to the department or delegated county adoption agency, in which case the revocation of consent shall be void and the remainder of the original 90 days shall be reinstated. However, in cases in which the birth parent or parents have regained custody, upon the delivery of such a statement to the department or delegated county adoption agency, the revocation of consent shall be void and a new 90-day period shall commence. The birth mother shall be informed of the operational timelines associated with this section at the time of signing of the statement reinstating the original consent.

(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency. If neither a representative of the department nor a representative of a delegated county adoption agency is reasonably available, the waiver of the right to revoke consent may be signed in the presence of a judicial officer of a court of record if the birth parent is represented by independent legal counsel. ''Reasonably available'' means that a representative from either the department or the delegated county adoption agency is available to accept the signing of the waiver within 10 days and is within 100 miles of the location of the birth mother.

An adoption service provider may assist the birth parent or parents in any activity where the primary purpose of that activity is to facilitate the

signing of the waiver with the department, a delegated county agency, or a judicial officer. The adoption service provider or another person designated by the birth parent or parents may also be present at any interview conducted pursuant to this section to provide support to the birth parent or parents.

The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record as specified in this section, in which case the interview and the witnessing of the signing of the waiver shall be conducted by the judicial officer. Within 10 working days of a request made after the department, the delegated county adoption agency, or the court has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department, the delegated county adoption agency, or the court shall interview, at the department or agency office or the court, any birth parent requesting to be interviewed. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

(A) A representative of a public adoption agency in that state.

(B) A judicial officer in that state where the birth parent is represented by independent legal counsel.

(C) An adoption service provider.

(3) Allow the consent to become a permanent consent on the 91st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 90 days, beginning on the date the consent was signed or as provided in paragraph (1) of subdivision (a), whichever occurs first.

(c) This section shall become operative on January 1, 1995.

SEC. 6. Section 9102 of the Family Code is amended to read:

9102. (a) An action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on any ground, except fraud, shall be commenced within one year after entry of the order.

(b) An action or proceeding of any kind to vacate, set aside, or nullify an order of adoption, based on fraud, shall be commenced within three years after entry of the order.

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 938

An act to amend Section 10321 of the Public Contract Code, relating to fairs.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 10321 of the Public Contract Code is amended to read:

10321. (a) (1) 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 purchased locally at a price equivalent to or less than that available through the state purchasing program.

(2) 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.

(3) As used in this subdivision, opportunity purchases means purchases made locally, either individually or cooperatively, at a price equal to or less than the price available through the state purchasing program on or off state contract.

(b) (1) The Legislature finds and declares that district agricultural associations and county and citrus fruit fairs often do not have large, full-time staffs, and consequently the generally applicable expenditure reporting requirements contained in the State Administrative Manual (SAM) can represent an unreasonable paperwork burden upon those associations and fairs.

(2) Notwithstanding any other provision of law, the Secretary of Food and Agriculture may develop, in consultation with the Department of General Services, an alternative expenditure reporting procedure from

the State Administrative Manual applicable to district agricultural associations and county and citrus fruit fairs with annual reportable expenditures of not more than one million dollars ($1,000,000). This procedure, at a minimum, shall maintain an audit trail and protect the ability of state auditors to confirm the proper use of state funds.

CHAPTER 939

An act to add and repeal Part 52 (commencing with Section 88500) to the Education Code, and to repeal Chapter 3.6 (commencing with Section 15379.20) of Part 6.7 of Division 3 of Title 2 of the Government Code, relating to community colleges.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 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 Association of American Community Colleges, in its 1997 National Workforce Development Study, found all of the following:

(1) By the year 2000, 65 percent of new jobs will require postsecondary education and training beyond high school, but below the baccalaureate level.

(2) Community colleges comprise a national force for economic and workforce development.

(3) Seventy-five percent of employers have immediate and continuing worker training needs and view community colleges as their most logical education and training provider.

(b) The California Economic Strategy Panel has concluded that California's new economy is an economy of regions driven by various industry clusters or concentrations of firms with potential for creating and sustaining regional wealth. The panel notes regions are not defined by political boundaries, but by common economic interests.

(c) The California Community Colleges Economic Development Program, through its various industry support programs, has demonstrated its capacity as an essential component of the region-by-region infrastructure that will be required to sustain the competitiveness of California's new economy.

SEC. 2. It is the intent of the Legislature, by enacting Section 3 of the act adding this section, to redefine and restructure the California Community Colleges Economic Development Program to maximize its capacity and mission as a provider of critical support for continuous

workforce improvement and economic development in a manner that is adaptive and responsive to changing needs of regional economies.

SEC. 3. Part 52 (commencing with Section 88500) is added to the Education Code, to read:

PART 52. CALIFORNIA COMMUNITY COLLEGES ECONOMIC DEVELOPMENT PROGRAM

CHAPTER 1. MISSION STATEMENT

88500. The mission of the economic development program, subject to approval and amendment by the Board of Governors of the California Community Colleges, shall include, but not be limited to, all of the following:

(a) To advance California's economic growth and global competitiveness through quality education and services focusing on continuous workforce improvement, technology deployment, and business development, consistent with the current needs of the state's regional economies.

(b) To maximize the resources of the California Community Colleges to fulfill its role as the primary provider in fulfilling the vocational education and training needs of California business and industry.

(c) To collaborate with other state and local agencies, including partners under the federal Workforce Investment Act of 1998 (Public Law 105-220), and the Trade and Commerce Agency, to deliver services that meet statewide and regional workforce, business development, technology transfer, and trade needs that attract, retain, and expand businesses.

(d) In consultation with the Economic Strategy Panel of the Trade and Commerce Agency, local economic development agencies, the private sector, labor and community groups, to develop innovative solutions, as needed, in identified strategic priority areas, including but not limited to, advanced transportation technologies, biotechnologies, small business, applied competitive technologies, including computer integrated manufacturing, production, and continuous quality improvement, business and workforce performance, environmental technologies, health care delivery, information technology, multimedia/entertainment, international trade, e-commerce and e-trade, and workplace literacy.

(e) To identify, acquire, and leverage community college and other vocational training resources when possible, to support local, regional, and statewide economic development.

(f) To create effective logistical, technical, and marketing infrastructure support for economic development activities within the California Community Colleges.

(g) To optimize access to community colleges' economic development services.

(h) To develop strategic public and private sector partnerships.

(i) To assist communities experiencing military base downsizing and closures.

CHAPTER 2. GENERAL PROVISIONS

88510. (a) The Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges may award grants to districts for leadership in accomplishing the mission and goals of the economic development program, as described in Section 88500.

(b) (1) The board of governors shall establish an advisory committee for the California Community Colleges Economic Development Program and determine the membership. The advisory committee shall guide overall program development, recommend resource development and deployment, and recommend strategies for implementation and coordination of regional business resources. Based on information developed by the Chancellor of the California Community Colleges pursuant to subdivision (d) and forwarded to the advisory committee, the advisory committee shall make recommendations to the chancellor and the board of governors on whether existing initiatives should continue to be funded at their existing levels, their funding increased or decreased, or their funding terminated.

(2) The membership of the advisory committee shall include representatives from labor, business, appropriate state agencies, including the Trade and Commerce Agency, a faculty representative, a classified employee representative, and one community college chief executive officer representative from each of the 10 California Community Colleges Economic Development Program regions.

(c) The decision criteria for allocating funds to colleges shall take into account all of the following:

(1) Regional needs of businesses.

(2) Emerging industries of a region, as identified by regional business resource, assistance, and innovation network infrastructure plans.

(3) For service delivery projects, the cost of organizing, administering, and delivering proposed services relative to the number of clients to be served and the expected benefits. For capacity building projects, showing how the capacity of the college is improved in order to deliver services to employers and students.

(4) A methodology, which shall be developed for allocating funds that is similar to the industry-driven regional collaborative funds or the job development incentive training funds, for colleges in those regions and economically distressed urban and rural areas that have not been successful in the competitive bid process in the past and have scarce resources to apply for economic development projects.

(d) The chancellor's office shall provide systemwide oversight and evaluation of the economic development program.

(e) The chancellor may establish program requirements and performance standards in the administration of the economic development program and distribute funds as appropriate to implement the program.

(f) The chancellor may provide technical assistance to community colleges for the purpose of improving the competitiveness of their proposals.

88515. This part shall be implemented only during those fiscal years for which funds are appropriated for the purposes of this part in the annual Budget Act.

CHAPTER 3. DEFINITIONS

88520. The following definitions govern the construction of this part:

(a) ''Business Resource Assistance and Innovation Network'' means the network of projects and programs that comprise the Community Colleges Economic Development Program.

(b) ''California Community Colleges Economic Development Program,'' ''economic development program,'' and ''ED>Net Program'' mean the program.

(c) ''Center'' means a comprehensive program of services offered by one or more community colleges to an economic region of the state in accordance with criteria established by the board of governors for designation as an economic development program center. Center services shall respond to the statewide strategic priority pursuant to the mission of the community colleges economic development programs and be consistent with the programmatic priorities, targeted industries, identified economic development, vocational education, and continuous workforce training needs of a region as identified by regional business resource, assistance, and innovation network infrastructure plans.

(d) ''Industry cluster'' means a geographic concentration or emerging concentration of interdependent industries with direct service, supplier, and research relationships, or independent industries that share common resources and sell a significant portion of their goods or services outside of the region.

(e) ''Industry-driven regional collaborative'' means a regional public, private, or other community organizational structure that jointly defines priorities, delivers services across programs, sectors, and in response to, or driven by, industry needs.

(f) ''Job development incentive training'' means programs that provide incentives to employers to create entry-level positions in their businesses or through suppliers or prime customers for welfare recipients, the working poor, or both.

(g) ''Matching resources'' means any combination of public or private resources, either cash or in-kind, derived from sources other than the economic development program funds appropriated by the annual Budget Act, that are determined to be necessary for the success of the project to which they are applied. The criteria for in-kind resources shall be developed by the board of governors with advice by the chancellor and the California Community Colleges Economic Development Program Executive Committee, and shall be consistent with generally accepted accounting practices for state and federal matching requirements. The ratio of matching resources to economic development program funding shall be determined by the board of governors.

(h) ''Region'' means a geographic area of the state defined by economic and labor market factors containing at least one industry cluster and the cities, counties, or community college districts, or all of them, in the industry cluster's geographic area. For the purposes of this chapter, ''California Community College regions'' shall be designated by the board of governors based on factors, including, but not limited to, all of the following:

(1) Regional economic development and training needs of business and industry.

(2) Regional collaboration, as appropriate, among community colleges and districts, and existing economic development, continuous workforce improvement, technology deployment, and business development.

(3) Other state economic development definitions of regions.

CHAPTER 4. CALIFORNIA COMMUNITY COLLEGES BUSINESS RESOURCE ASSISTANCE AND INNOVATION NETWORK TRUST FUND

88525. The California Community Colleges Business Resource Assistance and Innovation Network Trust Fund is hereby established in the State Treasury as a special fund administered by the board of governors. The board of governors may solicit direct contributions for deposit in the fund from various nonstate public and private sources for the purpose of funding the California Community Colleges Economic Development Program. Upon appropriation by the Legislature, the fund

may be expended for purposes of administering contracts for providing services, through the program, to public and private entities.

CHAPTER 5. CENTERS AND REGIONAL COLLABORATIVES

88530. It is the intent of the Legislature that the programs and services provided through the ED>Net Program shall be flexible and responsive to the needs identified through the regional planning process. Services shall be demand-driven, delivery structures shall be agile, performance-oriented, cost-effective, and contribute to regional economic growth and competitiveness. The use of economic development program centers, industry-driven regional collaboratives, and business networks, employers, and service providers shall provide a stable and flexible response mechanism for the identification of training priorities and to focus resources on short-term intensive projects for high growth sectors. These networks shall have the flexibility to meet the demand for new and emerging growth sectors and be formed, modified, eliminated, and reformed for short- or longer-term responses customized to the duration of the need.

88531. Economic development program centers and California Community College participation in industry-driven regional collaboratives may provide any or all of the following services and perform the following functions as participants of networks, including but not limited to:

(a) Curriculum development, design, and modification that contributes to workforce skill development common to industry clusters within a region.

(b) Development of instructional packages focusing on the technical skill specific to emerging occupations in targeted industries and growing industry clusters.

(c) Faculty mentorships, faculty and staff development, in-service training, and worksite experience supporting the new curriculum and instructional modes responding to identified regional needs.

(d) Institutional support, professional development, and transformational activities focused on removing systematic barriers to the development of new methods, transition to a flexible and more responsive administration of programs, and the timely and cost-effective delivery of services.

(e) The deployment of new methodologies, modes, and technologies that enhance performance and outcomes and improve cost effectiveness of service delivery.

(f) One-on-one counseling, seminars, workshops, and conferences that contribute to the achievement of the success of existing business and foster the growth of new business and jobs in emerging industry clusters.

(g) Performance-based training on a matching basis to business and industry employers that promote continuous workforce improvement in identified strategic priority areas, identified industry clusters, or areas targeted by network infrastructure plans pursuant to this chapter.

(h) Credit and noncredit programs and courses that contribute to workforce skill development common to industry clusters within a region or that focus on the technical skills specific to emerging occupations in targeted industries and growing industry clusters as identified by regional needs assessment.

(i) Subsidized student internships on a cash or in-kind matching basis for program participants in occupational categories determined to be consistent with the skill clusters necessary to be successful in the identified strategic priority areas, identified industry clusters, or areas targeted by network infrastructure plans.

(j) Acquisition of equipment to support the eligible activities and the limited renovation of facilities to accommodate the delivery of eligible services.

CHAPTER 6. JOB DEVELOPMENT INCENTIVE TRAINING PROGRAM

88540. (a) (1) Programs and activities of the Job Development Incentive Training Program shall include a strong partnership with state and local economic development entities, workforce development agencies, community-based organizations, and the private sector. It is the intent of the Legislature that this program provide training on a no-cost or low-cost basis to participating employers who create employment opportunities at an acceptable wage level for the attainment of self-sufficiency by both of the following groups:

(A) Recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(B) Clients determined to be eligible because they are employed at a wage too low to attain self-sufficiency.

(2) Guidelines for the determination of eligibility under this subdivision shall be developed by the chancellor's office in consultation with the appropriate local, state, and federal agencies responsible for collecting appropriate data.

(3) Funds received from other eligible programs, including, but not necessarily limited to, programs under the federal Workforce Investment Act of 1998 (Public Law 105-220) and other applicable programs selected by the chancellor, or a combination of programs, may be used to provide funds to match job development incentive training funds.

(b) It is the intent of the Legislature that the expenditure of funds under this section should lead measurably to the upgrading of highly skilled and technical workers, upgrade opportunities for those who are

employed at a wage too low to attain self-sufficiency, and the creation of jobs for new entrants into the workforce.

88541. Annual appropriations for the Job Development Incentive Training Program may be allocated for the purposes of supporting eligible activities if, as a result of the workforce improvement services provided to employers, entry-level positions are created within the industry cluster. Participating employers may receive eligible services such as performance-based training, and other eligible services that stimulate productivity and growth in targeted industrial clusters on a matching basis. Any annual savings from this section shall be available for expenditure for purposes of the Industry Driven Regional Collaborative Program.

88542. Matching fund requirements shall be waived for employers who receive training services through the Job Development Incentive Training Program and who accomplish either of the following:

(a) Create employment opportunities for recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code at an acceptable wage level to attain self-sufficiency.

(b) Create opportunities for individuals working at a low wage to upgrade to a wage adequate to attain self-sufficiency in the county in which they live.

88543. Each community college that participates in the Job Development Incentive Training Program shall inventory its local or regional business community and identify industry-driven needs and employment opportunities with a goal of attaining self-sufficiency through workforce reentry, continuous employee training, and skills upgrades.

CHAPTER 7. REPORTING

88550. (a) The chancellor shall implement accountability measures that provide the Governor, Legislature, and general public with accountability measurements of the program that quantify both business and student outcomes and seek to specifically isolate the impact of the ED>Net program on participants.

(b) The chancellor shall submit a report to the Governor and Legislature on or about January 1 of each year. Sufficient information shall be provided in the report to ensure the understanding of the magnitude of expenditures, by type of expenditure, including those specified in Section 88525, disaggregated by industry cluster and region. The report shall also include the marketing efforts conducted, the type of services provided to colleges and employers, the number of

businesses, students, and employees served, and identify the benchmarks and indicators used to demonstrate the results achieved.

CHAPTER 8. REPEAL

88551. This part shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 4. Chapter 3.6 (commencing with Section 15379.20) of Part 6.7 of Division 3 of Title 2 of the Government Code is repealed.

CHAPTER 940

An act to add and repeal Section 12419.2 of the Government Code, to add Section 817.5 to the Penal Code, and to amend Sections 19280 and 19283 of, and to add Section 19550 to, the Revenue and Taxation Code, relating to outstanding warrants.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 12419.2 is added to the Government Code, to read:

12419.2. (a) The Department of Justice, in consultation with the Controller, the Franchise Tax Board, and the California Lottery Commission, shall examine ways to enhance the use and effectiveness of Sections 12419.5 to 12419.10, inclusive, through integration with the Department of Justice's Wanted Persons System and shall report the findings and recommendations to the Legislature on or before January 1, 2002.

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

SEC. 2. Section 817.5 is added to the Penal Code, to read:

817.5. (a) On or after June 30, 2001, upon the issuance of any arrest warrant, the issuing law enforcement agency may enter the warrant information into the Department of Justice's Wanted Persons System.

(b) Notwithstanding any other provision of law, any state or local governmental agency shall, upon request, provide to the Department of Justice, a court, or any California law enforcement agency, the address of any person represented by the department, the court, or the law

enforcement agency to be a person for whom there is an outstanding arrest warrant.

SEC. 3. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior or municipal court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two hundred fifty dollars ($250), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the county or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by counties or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) (1) For the period January 1, 2001, to December 31, 2002, inclusive, the Franchise Tax Board may limit referrals under the program authorized by this article to 17 counties.

(2) The report required to be issued by the Franchise Tax Board pursuant to Section 13 of Chapter 1242 of the Statutes of 1994, as amended by Section 46 of Chapter 604 of the Statutes of 1997, is due to the Legislature on or before April 1, 2001, and shall specifically address

the feasibility and advisability of expanding the program authorized by this article to accept referrals from all 58 counties.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 4. Section 19283 of the Revenue and Taxation Code is amended to read:

19283. (a) The Department of Justice, in consultation with the Franchise Tax Board, shall examine ways to enhance the use and effectiveness of this article through integration with the Department of Justice's Wanted Persons System and shall report the findings and recommendations to the Legislature on or before January 1, 2002.

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

SEC. 5. Section 19550 is added to the Revenue and Taxation Code, to read:

19550. Pursuant to Section 817.5 of the Penal Code, the Franchise Tax Board, upon request from the Department of Justice, a court, or any California law enforcement agency and in a form and manner prescribed by the board, shall provide to the Department of Justice, the court, or the law enforcement agency the address of any person represented to be a person for whom there is an outstanding arrest warrant.

SEC. 6. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 941

An act to amend Section 56.17 of the Civil Code, and to amend Section 124980 of, to amend and renumber Section 125005 of, and to add Section 124981 to, the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 56.17 of the Civil Code is amended to read:

56.17. (a) This section shall apply to the disclosure of genetic test results contained in an applicant's or enrollee's medical records by a health care service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply,

except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's ''written authorization,'' as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106

of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

(i) For purposes of this section, ''genetic characteristic'' has the same meaning as that set forth in subdivision (d) of Section 1374.7 of the Health and Safety Code.

SEC. 2. Section 124980 of the Health and Safety Code is amended to read:

124980. The director shall establish any regulations and standards for hereditary disorders programs as the director deems necessary to promote and protect the public health and safety. Standards shall include licensure of master level genetic counselors and doctoral level clinical geneticists. Regulations adopted shall implement the principles established in this section. These principles shall include, but not be limited to, the following:

(a) The public, especially communities and groups particularly affected by programs on hereditary disorders, should be consulted before any regulations and standards are adopted by the department.

(b) The incidence, severity, and treatment costs of each hereditary disorder and its perceived burden by the affected community should be considered and, where appropriate, state and national experts in the medical, psychological, ethical, social, and economic effects or programs for the detection and management of hereditary disorders shall be consulted by the department.

(c) Information on the operation of all programs on hereditary disorders within the state, except for confidential information obtained from participants in the programs, shall be open and freely available to the public.

(d) Clinical testing procedures established for use in programs, facilities, and projects shall be accurate, provide maximum information, and the testing procedures selected shall produce results that are subject to minimum misinterpretation.

(e) No test or tests may be performed on any minor over the objection of the minor's parents or guardian, nor may any tests be performed unless the parent or guardian is fully informed of the purposes of testing for hereditary disorders and is given reasonable opportunity to object to the testing.

(f) No testing, except initial screening for phenylketonuria (PKU) and other diseases that may be added to the newborn screening program, shall require mandatory participation, and no testing programs shall require restriction of childbearing, and participation in a testing program shall not be a prerequisite to eligibility for, or receipt of, any other service or assistance from, or to participate in, any other program, except where

necessary to determine eligibility for further programs of diagnoses of or therapy for hereditary conditions.

(g) Pretest and posttest counseling services for hereditary disorders shall be available through the program or a referral source for all persons determined to be or who believe themselves to be at risk for a hereditary disorder. Genetic counseling shall be provided by a physician, a certified advanced practice nurse with a genetics specialty, or other appropriately trained licensed health care professional and shall be nondirective, shall emphasize informing the client, and shall not require restriction of childbearing.

(h) All participants in programs on hereditary disorders shall be protected from undue physical and mental harm, and except for initial screening for phenylketonuria (PKU) and other diseases that may be added to newborn screening programs, shall be informed of the nature of risks involved in participation in the programs, and those determined to be affected with genetic disease shall be informed of the nature, and where possible the cost, of available therapies or maintenance programs, and shall be informed of the possible benefits and risks associated with these therapies and programs.

(i) All testing results and personal information generated from hereditary disorders programs shall be made available to an individual over 18 years of age, or to the individual's parent or guardian. If the individual is a minor or incompetent, all testing results that have positively determined the individual to either have, or be a carrier of, a hereditary disorder shall be given through a physician or other source of health care.

(j) All testing results and personal information from hereditary disorders programs obtained from any individual, or from specimens from any individual, shall be held confidential and be considered a confidential medical record except for information that the individual, parent, or guardian consents to be released, provided that the individual is first fully informed of the scope of the information requested to be released, of all of the risks, benefits, and purposes for the release, and of the identity of those to whom the information will be released or made available, except for data compiled without reference to the identity of any individual, and except for research purposes, provided that pursuant to Subpart A (commencing with Section 46.101) of Part 46 of Title 45 of the Code of Federal Regulations entitled ''Basic HHS Policy for Protection of Human Subjects,'' the research has first been reviewed and approved by an institutional review board that certifies the approval to the custodian of the information and further certifies that in its judgment the information is of such potentially substantial public health value that modification of the requirement for legally effective prior informed consent of the individual is ethically justifiable.

(k) An individual whose confidentiality has been breached as a result of any violation of the provisions of the Hereditary Disorders Act, as defined in subdivision (b) of Section 27, may recover compensatory damages and, in addition, may recover civil damages not to exceed ten thousand dollars ($10,000), reasonable attorney's fees, and the costs of litigation.

(*l*) ''Genetic counseling'' as used in this section shall not include communications that occur between patients and appropriately trained and competent licensed health care professionals, such as physicians, registered nurses, and physicians assistants who are operating within the scope of their license and qualifications as defined by their licensing authority.

SEC. 3. Section 124981 is added to the Health and Safety Code, to read:

124981. (a) No person shall use the title of genetic counselor unless the person has applied for and obtained a license from the department.

(b) The applicant for a genetic counselor license shall meet minimum qualifications that include but are not limited to all of the following:

(1) Has earned a master's degree or above from a program specializing in or having substantial course content in genetics.

(2) Has demonstrated competence by an examination administered or approved by the department.

(c) The license shall be valid for three years unless at any time during that period it is revoked or suspended. The license may be renewed prior to the expiration of the three-year period.

(d) To qualify to renew the license, a licenseholder shall have completed 45 hours of continuing education units during the three-year license renewal period. At least 30 hours of the continuing education units shall be in genetics.

(e) The license fee for an original license and license renewal shall not exceed two hundred dollars ($200).

SEC. 4. Section 125005 of the Health and Safety Code is amended and renumbered to read:

124996. (a) The Genetic Disease Testing Fund is continued in existence as a special fund in the State Treasury. The department may charge a fee for any activities carried out pursuant to the Hereditary Disorders Act, including licensing activities conducted pursuant to Section 124980. All moneys collected by the department under the act shall be deposited in the Genetic Disease Testing Fund, that is continuously appropriated to the department to carry out the purposes of the act.

(b) It is the intent of the Legislature that the program carried out pursuant to the act be fully supported from fees collected under the act.

(c) The director shall adopt regulations establishing the amount of fees for activities carried out pursuant to the act.

(d) The ''Hereditary Disorders Act'' or ''act'' referred to in this section is the act described in subdivision (b) of Section 27.

CHAPTER 942

An act to amend Sections 41601.1 and 48200.7 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

I am signing Senate Bill No. 1387, however, I am deleting the $3 million appropriation to the Compton Community College District for the completion of a technology building.

This bill would prolong the extended school year program in the Compton Unified School District by one year and require the State Department of Education, in conjunction with the Legislative Analyst's Office, to provide for an evaluation of the program. This bill would also provide $3 million to the Compton Community College District for the completion of a technology building.

Extending the Compton Unified School District's longer school year program would allow what appears to be a successful program to continue. This additional year will provide the ability to document the program's success.

The $3 million appropriation for the Compton Community College District appears to lack support. I understand a similar request was reviewed by the California Community College Chancellor's Office, which determined that the costs were unsupportable for a state-funded project.

GRAY DAVIS, Governor

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

SECTION 1. Section 41601.1 of the Education Code is amended to read:

41601.1. (a) The attendance of pupils subject to Section 48200.7 in extended year classes provided by a school district exclusively for those pupils shall be excluded from the determination of average daily attendance pursuant to Section 41601.

(b) The average daily extended year attendance of pupils subject to Section 48200.7 in classes provided by a school district exclusively for those pupils, and consistent with subdivision (a) of Section 46300, shall be determined by dividing the total number of days of extended year attendance by a divisor of 180.

(c) Units of average daily extended year attendance determined pursuant to this section, not to exceed 675 units, shall be deemed to be units of regular average daily attendance for the purposes of all calculations of funding based on average daily attendance, except that

for the purposes of subdivision (d) of Section 41204, these units of average daily extended year attendance shall not be used for the purpose of calculating ''changes in enrollment'' pursuant to paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(d) As a condition to the receipt of funding based on pupil hours of extended year attendance determined pursuant to the provisions of this section, a school district shall provide to all pupils subject to Section 48200.7, while those pupils are attending extended year classes provided exclusively for them, at least an average of:

(1) Two hundred minutes per day in kindergarten.

(2) Two hundred eighty minutes per day in grades 1 to 3, inclusive.

(3) Three hundred minutes per day in grades 4 to 8, inclusive.

(4) Three hundred sixty minutes per day in grades 9 to 12, inclusive.

(e) A school district providing extended year classes pursuant to this section shall waive the right to conduct staff development days in lieu of instructional days that exceed the number of staff development days for which attendance was claimed during the 1997–98 school year, and shall waive any right to receive average daily attendance credit for any staff development days that exceed the number of staff development days for which attendance was claimed during the 1997–98 school year, including, but not limited to, staff development days authorized pursuant to Sections 44670.6, 52022, 52854, and 56242.

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

SEC. 2. Section 48200.7 of the Education Code is amended to read:

48200.7. (a) The State Department of Education shall identify the three lowest performing elementary schools in the Compton Unified School District for purposes of extending the school year for pupils enrolled in kindergarten or grades 1 and 2 and for those pupils in any of grades 3 to 5, inclusive, who are performing in mathematics or English language arts two or more grade levels below the grade in which those pupils are enrolled as determined under subdivision (d).

(b) Beginning with the 1998–99 school year, the Compton Unified School District may identify schools of the district, in addition to those identified pursuant to subdivision (a), that are among the lowest performing schools in the district, and may provide any pupil enrolled in kindergarten and grades 1 to 12, inclusive, in a school identified pursuant to this subdivision who is performing in mathematics or English language arts at two or more grade levels below the grade in which that pupil is enrolled as determined pursuant to subdivision (d), with extended school year instruction pursuant to Section 41601.1.

(c) Notwithstanding subdivision (b) of this section and Section 41601.1, the amount of funding claimed by the district for extended year instruction shall not in any year exceed twice the amount claimed pursuant to this section in the 1997–98 fiscal year as adjusted each year by the inflation adjustment determined pursuant to Section 42238.1.

(d) The determination that a pupil is performing two or more grade levels below the grade in which that pupil is enrolled shall be based on any combination of the following:

(1) The California Achievement Test-Form E.

(2) The Spanish assessment of basic education.

(3) Proficiency tests required for graduation.

(4) District criterion reference tests based on state curriculum guides.

(5) The STAR test.

(e) The Compton Unified School District shall test all pupils in kindergarten and grades 1 to 12, inclusive, in its lowest performing schools identified pursuant to subdivisions (a) and (b) prior to those pupils beginning an extended school year program under this section. At the end of the school year the school district shall again test the pupils in kindergarten and grades 1 to 12, inclusive, to determine the grade level at which those pupils are performing.

(f) The State Department of Education shall approve each of the following areas in each elementary school identified as low performing pursuant to subdivision (a):

(1) Curricula.

(2) Testing instruments.

(3) Schoolday length.

(4) Teacher selection, teacher mentoring, and staff development processes.

(g) The State Department of Education shall review teacher compensation, including salary and benefits, in each elementary school identified as low performing pursuant to subdivision (a).

(h) The State Department of Education shall collect data as to each of the following items for each school in subdivisions (a) and (b):

(1) Instructional materials used by, and made available to, the school.

(2) Teacher capacity.

(3) Any other baseline data deemed necessary by the department.

(i) Instruction provided to pupils subject to this section during schooldays in excess of schooldays offered to other pupils shall be devoted to instruction in basic skills in mathematics and English language arts.

(j) In conjunction with the Legislative Analyst, the State Department of Education shall contract for an independent evaluation to determine the effectiveness of the extended school year curriculum, instructional program, and materials provided pursuant to this section and funded

pursuant to Section 41601.1 in improving pupil academic outcomes. Testing and data collection conducted pursuant to this section shall be administered under the oversight of the independent evaluator, who shall be provided with copies of all test results. Results of the evaluation shall be reported on or before January 1, 2002, to the Superintendent of Public Instruction, the Legislative Analyst, the Director of Finance, and the appropriate policy and fiscal committees of the Legislature. The Compton Unified School District shall be responsible for all costs incurred pursuant to this subdivision.

(k) A percentage of funding appropriated for purposes of this section, in an amount to be determined by the Superintendent of Public Instruction, shall be used for purposes of testing and data collecting pursuant to this section.

SEC. 3. The sum of three million dollars ($3,000,000) is hereby appropriated from the General Fund to the Compton Community College District to complete a technology building.

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

CHAPTER 943

An act to add Sections 871.7 and 883 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 871.7 is added to the Public Utilities Code, to read:

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

(a) The Moore Universal Telephone Service Act, enacted in 1987, was intended to offer high quality basic telephone service at affordable

rates to the greatest number of California residents, and has become an important means of achieving universal service by making residential service affordable to low-income citizens through the creation of a lifeline class of service.

(b) Factors such as competition and technological innovation are resulting in the convergence of a variety of telecommunications technologies offering an expanded range of telecommunications services to users that incorporate voice, video, and data. These technologies have differing regulatory regimes and jurisdictions.

(c) It is the intent of the Legislature that the commission initiate a proceeding investigating the feasibility of redefining universal telephone service by incorporating two-way voice, video, and data service as components of basic service. It is the Legislature's further intent that, to the extent that the incorporation is feasible, that it promote equity of access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits that include all of the following:

(1) Improving the quality of life among the residents of California.

(2) Expanding access to public and private resources for education, training, and commerce.

(3) Increasing access to public resources enhancing public health and safety.

(4) Assisting in bridging the ''digital divide'' through expanded access to new technologies by low-income, disabled, or otherwise disadvantaged Californians.

(5) Shifting traffic patterns by enabling telecommuting, thereby helping to improve air quality in all areas of the state and mitigating the need for highway expansion.

(d) For purposes of this section, the term ''feasibility'' means consistency with all of the following:

(1) Technological and competitive neutrality.

(2) Equitable distribution of the funding burden for redefined universal service as described in subdivision (c), among all affected consumers and industries, thereby ensuring that regulated utilities' ratepayers do not bear a disproportionate share of funding responsibility.

(3) Benefits that justify the costs.

SEC. 2. Section 883 is added to the Public Utilities Code, to read:

883. (a) The commission shall, on or before February 1, 2001, issue an order initiating an investigation and opening a proceeding to examine the current and future definitions of universal service. That proceeding shall include public hearings that encourage participation by a broad and diverse range of interests from all areas of the state, including, but not limited to, all of the following:

(1) Consumer groups.

(2) Communication service providers, including all providers of high-speed access services.
(3) Facilities-based telephone providers.
(4) Information service providers and Internet access providers.
(5) Rural and urban users.
(6) Public interest groups.
(7) Representatives of small and large businesses and industry.
(8) Local agencies.
(9) State agencies, including, but not limited to, all of the following:
(A) The Trade and Commerce Agency.
(B) The Business, Transportation and Housing Agency.
(C) The State and Consumer Services Agency.
(D) The Department of Information Technology.
(E) The State Department of Education.
(F) The State Department of Health Services.
(G) The California State Library.
(10) Colleges and universities.

(b) The objectives of the proceeding set forth in subdivision (a) shall include all of the following:

(1) To investigate the feasibility of redefining universal service in light of current trends toward accelerated convergence of voice, video, and data, with an emphasis on the role of basic telecommunications and Internet services in the workplace, in education and workforce training, access to health care, and increased public safety.

(2) To evaluate the extent to which technological changes have reduced the relevance of existing regulatory regimes given their current segmentation based upon technology.

(3) To receive broad-based input from a cross section of interested parties and make recommendations on whether video, data, and Internet service providers should be incorporated into an enhanced Universal Lifeline Service program, as specified, including relevant policy recommendations regarding regulatory and statutory changes and funding options that are consistent with the principles set forth in subdivision (c) of Section 871.7.

(4) To reevaluate prior definitions of basic service in a manner that will, to the extent feasible, effectively incorporate the latest technologies to provide all California residents with all of the following:

(A) Improved quality of life.

(B) Expanded access to public and private resources for education, training, and commerce.

(C) Increased access to public resources enhancing public health and safety.

(D) Assistance in bridging the ''digital divide'' through expanded access to new technologies by low income, disabled, or otherwise disadvantaged Californians.

(5) To assess projected costs of providing enhanced universal lifeline service in accordance with the intent of this article, and to delineate the subsidy support needed to maintain the redefined scope of universal service in a competitive market.

(6) To design and recommend an equitable and broad-based subsidy support mechanism for universal service in competitive markets in a manner that conforms with subdivision (c) of Section 871.7.

(7) To develop a process to periodically review and revise the definition of universal service to reflect new technologies and markets consistent with subdivision (c) of Section 871.7.

(8) To consider whether similar regulatory treatment for the provision of similar services is appropriate and feasible.

(c) In conducting its investigation, the commission shall take into account the role played by a number of diverse but convergent industries and providers, even though many of these entities are not subject to economic regulation by the commission or any other government entity.

(d) The recommendations of the commission shall be consistent with state policies for telecommunications as set forth in Section 709, and with all of the following principles:

(1) Universal service shall, to the extent feasible, be provided at affordable prices regardless of linguistic, cultural, ethnic, physical, financial, and geographic considerations.

(2) Consumers shall be provided access to all information needed to allow timely and informed choices about telecommunications products and services that are part of the universal service program and how best to use them.

(3) Education, health care, community, and government institutions shall be positioned as early recipients of new and emerging technologies so as to maximize the economic and social benefits of these services.

(e) The commission shall complete its investigation and report to the Legislature its findings and recommendations on or before January 1, 2002.

CHAPTER 944

An act to amend Section 12693.76 of the Insurance Code, relating to health care.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 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 suffers from a crisis involving lack of health insurance, with the highest rate of uninsured residents of any state in the nation.

(b) Of California's 7,300,000 nonelderly uninsured residents, approximately 830,000 are low-income children and 400,000 are low-income working parents who are not on public assistance and who are eligible for, but not enrolled in, the Medi-Cal program. An additional 642,000 California children are eligible for health coverage under the Healthy Families Program, but are not enrolled in this program.

(c) Studies show that the health of children and their parents is significantly compromised without the access to care that health insurance provides. Poor health hearing, or vision seriously undermines children's performance in school.

(d) The state can save money on expensive emergency room care as well as on welfare costs when low-income people have health insurance, which promotes the ability to work and be productive.

(e) Families value the benefits of the Medi-Cal program, but are deterred from applying because of burdensome paperwork requirements, as shown by recent studies involving California families. California's paperwork requirements exceed those imposed by federal Medicaid rules and are a significant barrier to eligible persons. Simplification of these requirements would improve access to needed health insurance.

(f) Because of changes enacted in the 1996 federal welfare reform law, the federal Medicaid program has become an important program to address the health care needs of California's working poor families with children. Improving access to Medi-Cal for families that are eligible for but not enrolled in this program can help significantly in providing health care for the state's uninsured residents.

SEC. 2. Section 12693.76 of the Insurance Code, as amended by Chapter 93 of the Statutes of 2000, is amended to read:

12693.76. (a) Notwithstanding any other provision of law, a child who is a qualified alien as defined in Section 1641 of Title 8 of the United States Code Annotated shall not be determined ineligible solely on the basis of his or her date of entry into the United States.

(b) Notwithstanding any other provision of law, subdivision (a) may only be implemented to the extent provided in the annual Budget Act.

CHAPTER 945

An act to add Section 14005.25 to the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 14005.25 is added to the Welfare and Institutions Code, to read:

14005.25. (a) To the extent federal financial participation is available, the department shall exercise the option under Section 1902(e)(12) of the federal Social Security Act (42 U.S.C. Sec. 1396a(e)(12)) to extend continuous eligibility to children 19 years of age and younger. A child shall remain eligible pursuant to this subdivision from the date of a determination of eligibility for Medi-Cal benefits until the earlier of either:

(1) The end of a 12-month period following the eligibility determination.

(2) The date the individual exceeds the age of 19 years.

(b) This section shall be implemented only if, and to the extent that, federal financial participation is available.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall, without taking regulatory action, implement this section by means of all county letters or similar instructions. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 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.

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CHAPTER 946

An act to add Section 12693.755 to the Insurance Code, relating to health care.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 12693.755 is added to the Insurance Code, to read:

12693.755. (a) Subject to subdivisions (b) and (c), commencing July 1, 2001, the board shall expand eligibility under this part to uninsured parents of children eligible to receive coverage under this part.

(b) The board, in conjunction with the State Department of Health Services, shall seek any federal waivers necessary to implement subdivision (a).

(c) Subdivision (a) shall be implemented only to the extent that federal financial participation is obtained, and funds are appropriated specifically for this purpose. No appropriation shall be made for this purpose by Section 12693.96.

SEC. 2. The Managed Risk Medical Insurance Board may adopt emergency regulations to implement this act in accordance with the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall remain in effect for no more than 180 days.

CHAPTER 947

An act to amend Sections 20616, 20618, 21622, 21623, and 21623.5 of, and to add Section 21623.6 to, the Government Code, relating to retirement.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 20616 of the Government Code is amended to read:

20616. Sections 20469, 20470, 20502, 20512, 20570, 20571, and 20572 do not apply to contracts made pursuant to this chapter. The county superintendent of schools shall have no authority to exercise any election under any provision of this part, other than Section 21623.6, that applies to a contracting agency only on its election to be subject to it.

SEC. 2. Section 20618 of the Government Code is amended to read:

20618. The assets and liabilities arising out of contracts with school employers, as defined in Section 20063, shall be merged, excluding that portion of a contract that provides benefits pursuant to Section 21623.6, that portion of a contract with respect to local police officers, as defined in Section 20430, and those contracts with school districts or community college districts, as defined in subdivision (i) of Section 20057, that employ school safety members, as defined in Section 20444. Employer accumulated contributions credited to those entities on June 30, 1982, and all the contributions paid by a school employer after June 30, 1982, shall be held exclusively for the benefit of school members, retired school members, and their beneficiaries.

A person who is a member under a contract between the board and school districts or community college districts prior to July 1, 1983, shall not be denied any right extended to him or her by reason of that membership.

SEC. 2.5. Section 20618 of the Government Code is amended to read:

20618. (a) The assets and liabilities arising out of contracts with school employers, as defined in Section 20063, shall be merged, excluding that portion of a contract that provides benefits pursuant to Section 21623.6, that portion of a contract with respect to local police officers, as defined in Section 20430, and those contracts with school districts or community college districts, as defined in subdivision (i) of Section 20057, that employ school safety members, as defined in Section 20444. Employer accumulated contributions credited to those entities on June 30, 1982, and all the contributions paid by a school employer after June 30, 1982, shall be held exclusively for the benefit of school members, retired school members, and their beneficiaries.

(b) Effective December 31, 1999, the assets and liabilities of the Los Angeles Unified School District and the Los Angeles Community College District held with respect to miscellaneous members and retirees who have service credit with those school districts prior to July 1, 1983, shall be merged with those assets and liabilities of other school employers as provided in subdivision (a). Any service previously

credited as local miscellaneous service with those employers shall be considered service credit with a school employer.

(c) A person who is a member under a contract between the board and school districts or community college districts prior to July 1, 1983, shall not be denied any right extended to him or her by reason of that membership.

SEC. 3. Section 21622 of the Government Code is amended to read:

21622. (a) In lieu of benefits provided by Section 21620, upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her estate, or to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of six hundred dollars ($600), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and, (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the contracting agency's contract.

(d) This section shall not apply to any contracting agency, except for those contracting agencies that are school employers and those school districts or community college districts, as defined in subdivision (i) of Section 20057, 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 an election among the employees is not required, or, in the case of contracts made after January 1, 1981, by express provision in the contract making the contracting agency subject to this section.

SEC. 3.5. Section 21622 of the Government Code is amended to read:

21622. (a) In lieu of benefits provided by Section 21620, upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of six hundred dollars ($600), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined

on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and, (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the contracting agency's contract.

(d) This section shall not apply to any contracting agency, except for those contracting agencies that are school employers and those school districts or community college districts, as defined in subdivision (i) of Section 20057, 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 an election among the employees is not required, or, in the case of contracts made after January 1, 1981, by express provision in the contract making the contracting agency subject to this section.

SEC. 4. Section 21623 of the Government Code is amended to read:

21623. (a) In lieu of benefits provided by Section 21620 or 21622, upon the death of any retired state or school member, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her estate, or to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall apply to a school employer and a retired school member whose death after retirement occurs on or after January 1, 2001. This section shall not apply to any contracting agency or local member, except those contracting agencies that are school employers and those school districts or community college districts as defined subdivision (i) of Section 20057.

SEC. 4.5. Section 21623 of the Government Code is amended to read:

21623. (a) In lieu of benefits provided by Section 21620 or 21622, upon the death of any retired state or school member, after retirement and

while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall apply to a school employer and a retired school member whose death after retirement occurs on or after January 1, 2001. This section shall not apply to any contracting agency or local member, except those contracting agencies that are school employers and those school districts or community college districts as defined in subdivision (i) of Section 20057.

SEC. 5. Section 21623.5 of the Government Code is amended to read:

21623.5. (a) In lieu of benefits provided by Sections 21620 and 21622 upon the death of any local member, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her estate, or to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), three thousand dollars ($3,000), four thousand dollars ($4,000), or five thousand dollars ($5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to a 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 an election among the employees is not required or in the case of contracts made on or after January 1, 1999, except by express provision in the contract making the contracting agency subject to this section.

SEC. 5.5. Section 21623.5 of the Government Code is amended to read:

21623.5. (a) In lieu of benefits provided by Sections 21620 and 21622, upon the death of any local member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), three thousand dollars ($3,000), four thousand dollars ($4,000), or five thousand dollars ($5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to a 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 an election among the employees is not required or in the case of contracts made on or after January 1, 1999, except by express provision in the contract making the contracting agency subject to this section.

SEC. 6. Section 21623.6 is added to the Government Code, to read:

21623.6. (a) In lieu of benefits provided by Sections 21620, 21622, and 21623, upon the death of any school member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of three thousand dollars ($3,000), four thousand dollars ($4,000), or five thousand dollars ($5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to a school employer unless and until it elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made on or after January 1, 2001, except by express provision in the contract making the school employer subject to this section.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 20618 of the Government Code proposed by both this bill and SB 528. 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 20618 of the Government Code, and (3) this bill is enacted after SB 528, in which case Section 20618 of the Government Code, as amended by SB 528, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 21622 of the Government Code proposed by both this bill and SB 1998. 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 21622 of the Government Code, and (3) this bill is enacted after SB 1998, in which case Section 3 of this bill shall not become operative.

SEC. 9. Section 4.5 of this bill incorporates amendments to Section 21623 of the Government Code proposed by both this bill and SB 1998. 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 21623 of the Government Code, (3) AB 1829 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1998, in which case Section 4 of this bill shall not become operative.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 21623.5 of the Government Code proposed by both this bill and SB 1998. 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 21623.5 of the Government Code, and (3) this bill is enacted after SB 1998, in which case Section 5 of this bill shall not become operative.

CHAPTER 948

An act to amend Section 822 of the Evidence Code, relating to eminent domain.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 822 of the Evidence Code is amended to read:

822. (a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821,

inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property:

(1) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain.

The price or other terms and circumstances shall not be excluded pursuant to this paragraph if the proceeding relates to the valuation of all or part of a water system as defined in Section 240 of the Public Utilities Code.

(2) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which the property or interest was optioned, offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.

(3) The value of any property or property interest as assessed for taxation purposes or the amount of taxes which may be due on the property, but nothing in this subdivision prohibits the consideration of actual or estimated taxes for the purpose of determining the reasonable net rental value attributable to the property or property interest being valued.

(4) An opinion as to the value of any property or property interest other than that being valued.

(5) The influence upon the value of the property or property interest being valued of any noncompensable items of value, damage, or injury.

(6) The capitalized value of the income or rental from any property or property interest other than that being valued.

(b) In an action other than an eminent domain or inverse condemnation proceeding, the matters listed in subdivision (a) are not admissible as evidence, and may not be taken into account as a basis for an opinion as to the value of property, except to the extent permitted under the rules of law otherwise applicable.

CHAPTER 949

An act to amend Section 68078 of the Education Code, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 68078 of the Education Code is amended to read:

68078. (a) A student holding a valid credential authorizing service in the public schools of this state who is employed by a school district in a full-time position requiring certification qualifications for the college year in which the student enrolls in an institution is entitled to resident classification if that student meets any of the following requirements:

(1) He or she holds a provisional credential and is enrolled at an institution in courses necessary to obtain another type of credential authorizing service in the public schools.

(2) He or she holds a credential issued pursuant to Section 44250 and is enrolled at an institution in courses necessary to fulfill credential requirements.

(3) He or she is enrolled at an institution in courses necessary to fulfill the requirements for a fifth year of education prescribed by subdivision (b) of Section 44259.

(b) Notwithstanding any other provision of law, a student holding a valid emergency permit authorizing service in the public schools of this state, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses necessary to fulfill teacher credential requirements, is entitled to resident classification only for the purpose of determining the amount of tuition and fees for no more than one year. Thereafter, the student shall be subject to Article 5 (commencing with Section 68060).

(c) This section shall not be construed to affect the admissions policies of any teacher preparation program.

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 address the serious shortage of credentialed teachers in this state as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 950

An act to add Chapter 9 (commencing with Section 1850) to Division 2 of the Fish and Game Code, relating to wetlands.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 9 (commencing with Section 1850) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 9. WETLANDS MITIGATION BANKING

Article 1. General Provisions

1850. On or before January 1, 2002, the department shall establish an updated data base of all existing and operating wetlands mitigation banks that sell credits to the public in California. To the extent feasible, the department shall use all existing information in compiling this data base and shall utilize the CERES Environmental Data Catalog to make this information available to the public. The department shall update this data base on an annual basis and shall include all relevant information required by Section 1851.

1851. On or before January 1, 2002, and biennially thereafter, the department shall review the data base and the data catalog described in Section 1850, and shall provide a report to the Legislature with a description and the status of each existing wetlands mitigation bank site in operation as of January 1, 2001, and each mitigation bank site approved thereafter. The report shall include, but not be limited to, all of the following information:

(a) The name, address, and telephone number of the person or agency who created the wetlands mitigation bank site.

(b) The name, address, and telephone number of the wetlands mitigation bank operator and the address or other appropriate physical description of the location of the wetlands mitigation bank site.

(c) The date the wetlands mitigation bank site was created.

(d) A description of the wetlands mitigation bank site's service area.

(e) A description of existing habitat functions at the wetlands mitigation bank site prior to its development as a wetlands mitigation bank site.

(f) The type of financial assurances secured by the wetlands mitigation bank operator to ensure management of the wetlands mitigation bank site in perpetuity.

(g) Whether goals were established for the wetlands mitigation bank site and what percentage of those goals have been achieved.

(h) Utilizing existing information compiled by the United States Army Corps of Engineers or other federal agencies, the number of wetlands acres and habitat functions created at the bank site.

(i) The number of credits issued and to whom.

(j) An assessment of the biological productivity of the created wetlands.

(k) Utilizing existing information that is publicly available within the records of state or federal agencies, a comparison of the wetlands acreage and habitat functions that were created at the bank site and those that were lost as a result of the permitted projects for which credits were obtained.

1852. This article shall not be implemented until sufficient funds for its implementation have been appropriated in the annual Budget Act or other legislation.

CHAPTER 951

An act to amend Section 88091 of, and to add Section 44265.10 to, the Education Code, relating to educational employees.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 44265.10 is added to the Education Code, to read:

44265.10. (a) The Commission on Teacher Credentialing shall issue a two-year services credential with a specialization in pupil personnel services, solely for the purpose of counseling deaf and hearing-impaired pupils as a school psychologist, to any prelingually deaf candidate upon medical or other appropriate professional verification, provided the candidate has met the minimum requirements specified in Section 44266.

(b) An applicant under this section is exempted from the requirements in Section 44252 and subdivision (b) of Section 44830.

(c) ''Prelingually deaf'' means a person who suffered a hearing loss prior to three years of age that prevents the processing of linguistic information through hearing, with or without amplification.

(d) The services credential issued under this section authorizes the holder to serve at all grade levels as a school psychologist of deaf and hearing-impaired pupils who are enrolled in state special schools or in special classes for pupils with hearing impairments.

SEC. 2. Section 88091 of the Education Code is amended to read:

88091. (a) All vacancies in the classified service shall be filled pursuant to this article and the rules of the commission, from applicants

on eligibility lists which, wherever practicable, as determined by the commission, shall be made up from promotional examinations, or appointments may be made by means of transfer, demotion, reinstatement, and reemployment in accordance with the rules of the commission. All applicants for promotional examinations shall have the required amount of service in classes designated by the commission or meet the minimum qualifications of education, training, experience, and length of service, which shall be determined by the commission to be appropriate for the class for which they have applied. Any promotional applicant who has served the required amount of time in a designated class or who meets the minimum qualifications for admission to a promotional examination shall be admitted to the examination. Applicants shall be placed on the eligibility lists in the order of their relative merit as determined by competitive examinations. The final scores of candidates shall be rounded to the nearest whole percent for all eligibles. All eligibles with the same percentage score will be considered as having the same rank. Appointments shall be made from the eligibles having the first three ranks on the list who are ready and willing to accept the position.

(b) (1) Upon the request of a majority of the members of the governing board of a community college district, the commission may exempt two executive secretarial positions from the requirements of this section. Exemptions authorized under this subdivision shall be limited to one executive secretary position reporting directly to members of the governing board, and one executive secretary position reporting directly to the chancellor.

(2) Any person employed in an exempt executive secretarial position shall continue to be afforded all of the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, except he or she shall not attain permanent status in an executive secretarial position. Positions of executive secretary shall be filled from an unranked list of eligible employees who have been found to be qualified for the positions as determined by the district chancellor or superintendent and determined by the personnel commission. Any person whose services in an executive secretarial position are discontinued for a cause other than a cause for disciplinary action specified in this code or in a rule of the commission shall have the right to return to a position in a classification he or she previously occupied or, if that classification no longer exists, in a similar classification, as determined by the commission. This subdivision shall apply only to the employees hired on or after January 1, 1988.

(c) (1) Upon the request of a majority of the members of the governing board of a community college district, the personnel commission may exempt designated senior classified administrative

positions from the requirements of this section. A ''senior classified administrative employee'' means a classified employee who acts as the chief business, fiscal, facilities, or information technology adviser or administrator for the district chancellor or superintendent or a college president, as determined by the governing board and certified by the personnel commission.

(2) Any person employed in an administrative position exempted under this subdivision shall continue to be afforded all of the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, except that he or she shall not attain permanent status in that administrative position. A vacancy in an administrative position that is exempted under this subdivision shall be filled from an unranked list of eligible persons who have been found to be qualified for the positions as determined by the district chancellor or superintendent and the personnel commission. Any person whose services in an administrative position exempted under this subdivision are discontinued for any reason other than for cause as specified in this code or in a rule of the personnel commission shall have the right to return to a position in a classification he or she previously occupied or, if that classification no longer exists, in a similar classification, as determined by the commission.

(3) This subdivision shall apply only to employees hired on or after January 1, 2001.

(d) Nothing contained in this section shall authorize the selection of eligible candidates in circumvention of the affirmative action programs of any community college district.

CHAPTER 952

An act to add Section 30166.5 to the Public Resources Code, relating to the California Coastal Act.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 30166.5 is added to the Public Resources Code, to read:

30166.5. (a) On or before January 15, 2002, the commission shall submit to the City of Malibu an initial draft of the land use portion of the local coastal program for the City of Malibu portion of the coastal zone,

which is specifically delineated on maps 133, 134, 135, and 136, which were placed on file with the Secretary of State on September 14, 1979.

(b) On or before September 15, 2002, the commission shall, after public hearing and consultation with the City of Malibu, adopt a local coastal program for that area within the City of Malibu portion of the coastal zone that is specifically delineated on maps 133, 134, 135, and 136, which have been placed on file with the Secretary of State on March 14, 1977, and March 1, 1987. The local coastal program for the area shall, after adoption by the commission, be deemed certified, and shall, for all purposes of this division, constitute the certified local coastal program for the area. Subsequent to the certification of the local coastal program, the City of Malibu shall immediately assume coastal development permitting authority, pursuant to this division. Notwithstanding the requirements of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, once the City of Malibu assumes coastal development permitting authority pursuant to this section, no application for a coastal development permit shall be deemed approved if the city fails to take timely action to approve or deny the application.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 953

An act to repeal and add Sections 1756, 1757, 1757.1, and 1758, of the Public Utilities Code, and to amend Section 1.5 of Chapter 886 of the Statutes of 1998, relating to public utilities.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 1756 is added to the Public Utilities Code:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition

for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.

(e) Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.

(f) For purposes of this section, review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court.

(g) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

SEC. 2. Section 1756 of the Public Utilities Code, as added by Section 10.5 of Chapter 886 of the Statutes of 1998, is repealed.

SEC. 3. Section 1757 is added to the Public Utilities Code, to read:

1757. (a) No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The commission acted without, or in excess of, its powers or jurisdiction.

(2) The commission has not proceeded in the manner required by law.

(3) The decision of the commission is not supported by the findings.

(4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.

(5) The order or decision of the commission was procured by fraud or was an abuse of discretion.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

(c) Notwithstanding subdivision (a), the standard of review in this section shall not apply to ratemaking or licensing decisions of specific application addressed solely to water corporations.

SEC. 4. Section 1757 of the Public Utilities Code, as added by Section 12.5 of Chapter 886 of the Statutes of 1998, is repealed.

SEC. 5. Section 1757.1 is added to the Public Utilities Code, to read:

1757.1. (a) In any proceeding other than a proceeding subject to the standard of review under Section 1757, review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The order or decision of the commission was an abuse of discretion.

(2) The commission has not proceeded in the manner required by law.

(3) The commission acted without, or in excess of, its powers or jurisdiction.

(4) The decision of the commission is not supported by the findings.

(5) The order or decision was procured by fraud.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) In reviewing decisions pertaining solely to water corporations, the review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or this state.

(c) No new or additional evidence shall be introduced upon review by the court. The findings and conclusions of the commission on findings of fact shall be final and shall not be subject to review except as provided in this article. The questions of fact shall include ultimate facts and

findings and conclusions of the commission on reasonableness and discrimination.

SEC. 6. Section 1757.1 of the Public Utilities Code, as added by Section 14.5 of Chapter 886 of the Statutes of 1998, is repealed.

SEC. 7. Section 1758 is added to the Public Utilities Code, to read:

1758. (a) The commission and each party to the action or proceeding before the commission may appear in the review proceeding.

Upon the hearing the Supreme Court or court of appeal shall enter judgment either affirming or setting aside the order or decision of the commission.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with this part, apply to proceedings instituted in the Supreme Court or court of appeal under this article.

(c) Under this article, the Supreme Court may review decisions of the court of appeal in the manner provided for other civil actions.

(d) The Supreme Court shall grant expedited consideration to any party or commission petition alleging that the court of appeal has assumed jurisdiction to review a commission decision pertaining solely to water corporations over which the court of appeal has no jurisdiction.

SEC. 8. Section 1758 of the Public Utilities Code, as added by Section 15.5 of Chapter 886 of the Statutes of 1998, is repealed.

SEC. 9. Section 1.5 of Chapter 886 of the Statutes of 1998 is amended to read.

Sec. 1.5. (a) The Legislature finds and declares that the conversion of the energy, transportation, and telecommunications industries from traditional regulated markets to competitive markets necessitates a change in the judicial review of Public Utilities Commission decisions that pertain to those industries. The Legislature finds that the activities of the energy, telecommunications, and transportation industries will require expanded access to the court system at all levels. The Legislature finds that uniformity of evolving decisional law and judicial economy will be achieved by providing for appellate review of certain Public Utilities Commission decisions. The Legislature further finds and declares that inasmuch as the water supply industry continues to operate in a traditional, noncompetitive utility market, that changes in judicial review of competitive utility markets are inappropriate in their application to Public Utilities Commission decisions and proceedings that pertain to water corporations.

(b) It is the intent of the Legislature in enacting the judicial review provisions of this act to, in part, establish the manner and scope of review taken from decisions of the Public Utilities Commission. It is further the intent of the Legislature to conform judicial review of the Public Utilities Commission decisions that pertain to utility service providers with

competitive markets to be consistent with judicial review of the other state agencies. It is the intent of the Legislature to, among other things, overrule Camp Meeker Water System, Inc. v. Public Utilities Commission, 51 Cal.3d 845, as it pertains only to decisions affecting the energy, transportation, and communications industries, but to leave that decision in place as it pertains to water corporations. Further, it is the intent of the Legislature that decisions by the commission pertaining to the energy, transportation, and communications industries be subject to review on grounds similar to those of other state agencies.

CHAPTER 954

An act to amend Sections 1723, 1726, 1727, and 1773.1 of, to add Sections 1741 and 1743 to, to add and repeal Sections 1742 and 1742.1 of, to repeal Sections 1730, 1731, 1732, 1733, and 1771.7 of, to repeal and amend Section 1775 of, and to repeal and add Section 1771.6 of, the Labor Code, relating to public works.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. The Legislature declares that its intent in adopting this act is to provide contractors and subcontractors with a prompt administrative hearing in the event that the contractor or subcontractor is alleged by the Labor Commissioner or an awarding body to have violated Labor Code provisions governing the obligations of contractors and subcontractors on public works projects, and to provide that the exclusive method for review of the decision after the administrative hearing is by petition for writ of mandate under Section 1094.5 of the Code of Civil Procedure. It is not the intent of this act to preclude remedies otherwise authorized by law to remedy violations of this chapter.

SEC. 2. Section 1723 of the Labor Code is amended to read:

1723. ''Worker'' includes laborer, worker, or mechanic.

SEC. 3. Section 1726 of the Labor Code is amended to read:

1726. The body awarding the contract for public work shall take cognizance of violations of the provisions of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

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

1727. (a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

(b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

SEC. 5. Section 1730 of the Labor Code is repealed.

SEC. 6. Section 1731 of the Labor Code is repealed.

SEC. 7. Section 1732 of the Labor Code is repealed.

SEC. 8. Section 1733 of the Labor Code is repealed.

SEC. 9. Section 1741 is added to the Labor Code, to read:

1741. If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor or both. The assessment shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due and shall include the basis for the assessment. The assessment shall be served not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever occurs last. However, if the assessment is served after the expiration of this 180-day period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the

identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

SEC. 10. Section 1742 is added to the Labor Code, to read:

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The director shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of

Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

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

SEC. 11. Section 1742 is added to the Labor Code, to read:

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) (1) Upon receipt of a timely request, a hearing shall be commenced within 90 days before an administrative law judge appointed by the Director of Industrial Relations. The appointed hearing judge shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence

obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

(2) The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

(3) Within 45 days of the conclusion of the hearing, the administrative law judge shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the administrative law judge shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the administrative law judge may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(4) The Director of Industrial Relations shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the administrative law judge by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

(h) This section shall become operative on January 1, 2005.

SEC. 12. Section 1742.1 is added to the Labor Code, to read:

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for believing the assessment or notice to be in error, the director shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

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

SEC. 13. Section 1742.1 is added to the Labor Code, to read:

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the administrative law judge that he or she had substantial grounds for believing the assessment or notice to be in error, the administrative law judge shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

This section shall become operative on January 1, 2005.

SEC. 14. Section 1743 is added to the Labor Code, to read:

1743. (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

SEC. 15. Section 1771.6 of the Labor Code is repealed.

SEC. 16. Section 1771.6 is added to the Labor Code, to read:

1771.6. (a) Any awarding body that enforces this chapter in accordance with Section 1726 or 1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.

The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

(c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.

(d) From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is

recovered to pay each worker in full, the money shall be prorated among all workers.

(e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

SEC. 17. Section 1771.7 of the Labor Code is repealed.

SEC. 18. Section 1773.1 of the Labor Code is amended to read:

1773.1. (a) Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, and apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions, and similar purposes, when the term ''per diem wages'' is used in this chapter or in any other statute applicable to public works.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, no credit shall be granted for benefits required to be provided by other state or federal law. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.

(d) The credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, except where one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(e) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

Where a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

SEC. 19. Section 1775 of the Labor Code, as amended by Section 1 of Chapter 757 of the Statutes of 1997, is repealed.

SEC. 20. Section 1775 of the Labor Code, as added by Section 2 of Chapter 757 of the Statutes of 1997, is amended to read:

1775. (a) The contractor and any subcontractor under him or her shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or, except as provided in subdivision (b), by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(1) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the contractor or subcontractor.

(2) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall

cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

SEC. 21. This act shall become operative on July 1, 2001.

SEC. 22. 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 955

An act to amend Sections 233, 32228, 32228.1, 44253.2, and 44253.3 of the Education Code, and to amend Sections 628, 628.1, 628.2, and 628.5 of the Penal Code, relating to hate violence.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Hate motivated incidents and hate crimes jeopardize the safety and well-being of all students and staff and are injurious to those victimized by such behavior. Unfortunately, there has been an increasing level of hate motivated incidents and hate crimes in our schools and communities.

(b) Current law requires school districts to report crime statistics to the State Department of Education for compilation in the annual California Safe Schools Assessment. However, the ongoing collection of information on the number of hate crimes and hate motivated incidents on school grounds is not part of the compilation.

(c) In 1999, the Legislature enacted the Carl Washington School Safety and Violence Prevention Act, and appropriated one hundred million dollars ($100,000,000) for its purposes. Preventing and responding to acts of hate violence should be an explicit priority for expenditure.

(d) It should be the goal of the state to insure that students, teachers, administrators, and support staff appreciate and respect diversity, understand the roles and contributions of people of diverse groups, and are prepared to interact harmoniously, work productively, and thrive personally in a pluralistic society.

(e) Better data collection of hate motivated incidents and hate crimes will provide useful information, locally and at the state level, to assist in targeting limited resources with greater effectiveness.

SEC. 2. Section 233 of the Education Code is amended to read:

233. (a) At the request of the Superintendent of Public Instruction, the State Board of Education shall do all of the following as long as the board's actions do not result in a state mandate or an increase in costs to a state or local program:

(1) Adopt policies directed toward creating a school environment in kindergarten and grades 1 to 12, inclusive, that is free from discriminatory attitudes and practices and acts of hate violence.

(2) Revise, as needed, and in accordance with the State Board of Education's adopted Schedule for Curriculum Framework Development and Adoption of Instructional Materials developed pursuant to Section 60200, the state curriculum frameworks and guidelines and the moral and civic education curricula to include human relations education, with the aim of fostering an appreciation of the diversity of California's population and discouraging the development of discriminatory attitudes and practices.

(3) Establish guidelines for use in teacher and administrator in-service training programs to promote an appreciation of diversity and to discourage the development of discriminatory attitudes and practices that prevent pupils from achieving their full potential.

(4) Establish guidelines for use in teacher and administrator in-service training programs designed to enable teachers and administrators to prevent and respond to acts of hate violence occurring on their school campuses.

(5) Establish guidelines designed to raise the awareness and sensitivity of teachers, administrators, and school employees to potentially prejudicial and discriminatory behavior and to encourage the participation of these groups in these programs.

(6) Develop guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(7) Revise any appropriate guidelines previously adopted by the board to include procedures for preventing and responding to acts of hate violence.

(b) The State Department of Education, in accordance with policies established by the State Board of Education for purposes of this subdivision, shall do all of the following:

(1) Prepare guidelines for the design and implementation of local programs and instructional curricula that promote understanding, awareness, and appreciation of the contributions of people with diverse backgrounds and of harmonious relations in a diverse society. The guidelines shall include methods of evaluating the programs and curricula and suggested procedures to ensure coordination of the programs and curricula with appropriate local public and private agencies.

(2) Provide grants, from funds appropriated for that purpose, to school districts and county offices of education to develop programs and curricula consistent with the guidelines developed in paragraph (1).

(3) To the extent possible, provide advice and direct services, consistent with the guidelines developed in paragraph (1), to school districts and county offices of education that implement the programs and curricula developed in paragraph (2).

(c) The State Board of Education shall carry out this section only if private funds, in an amount sufficient to pay for related State Department of Education staff activities on behalf of the board, are made available.

(d) Nothing in this section shall be construed to require the governing board of a school district to offer any ethnic studies or human relations courses in the district.

(e) As used in this section, ''hate violence'' means any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code.

SEC. 3. Section 32228 of the Education Code is amended to read:

32228. (a) It is the intent of the Legislature that public schools serving pupils in kindergarten or any of grades 1 to 12, inclusive, have access to supplemental resources to establish programs and strategies that promote school safety and emphasize violence prevention among children and youth in the public schools.

(b) It is also the intent of the Legislature that public schools have access to supplemental resources to combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, as defined in subdivision (q) of Section 12926 of the Government Code, and to prevent and respond to acts of hate violence and bias related incidents. Sexual orientation shall not include pedophilia.

(c) It is further the intent of the Legislature that schoolsites receiving funds pursuant to this article accomplish all of the following goals:

(1) Teach pupils techniques for resolving conflicts without violence.

(2) Train school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between and among pupils.

(3) Reduce incidents of violence at the schoolsite with an emphasis on prevention and early detection.

SEC. 4. Section 32228.1 of the Education Code is amended to read:

32228.1. (a) The School Safety and Violence Prevention Act is hereby established. This statewide program shall be administered by the Superintendent of Public Instruction, who shall provide funds to school districts serving pupils in kindergarten or any of grades 1 to 12, inclusive, for the purpose of promoting school safety and reducing schoolsite violence. As a condition of receiving funds pursuant to this article, an eligible school district shall certify, on forms and in a manner

required by the Superintendent of Public Instruction, that the funds will be used as described

(b) From funds appropriated in the annual Budget Act or any other measure, funds shall be allocated to school districts on the basis of prior year enrollment, as reported by the California Basic Educational Data System, of pupils in kindergarten or any of grades 1 to 12, inclusive, for any one or more of the following purposes:

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

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

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

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

(5) Preventing and responding to acts of hate violence and bias related incidents, including implementation of programs and instructional curricula consistent with the goals set forth in this section and guidelines developed pursuant to paragraph (1) of subdivision (b) of Section 233.

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

SEC. 5. Section 44253.2 of the Education Code is amended to read:

44253.2. For the purposes of this chapter, the following terms shall have the following meanings, unless the context otherwise requires:

(a) ''Instruction for English language development'' means instruction designed specifically for limited-English-proficient pupils to develop their listening, speaking, reading, and writing skills in English.

(b) ''Specially designed content instruction delivered in English'' means instruction in a subject area, delivered in English, that is specially designed to meet the needs of limited-English-proficient pupils.

(c) ''Content instruction delivered in the primary language'' means instruction in a subject area delivered in the primary language of the pupil.

(d) ''Instruction for primary language development'' means instruction designed to develop a pupil's listening, speaking, reading, and writing skills in the primary language of the pupil.

(e) ''Culture and cultural diversity'' means an understanding of human relations, including the following:

(1) The nature and content of culture.

(2) Cross cultural contact and interactions.

(3) Cultural diversity in the United States and California.

(4) Approaches to providing instruction responsive to the diversity of the student population.

(5) Recognizing and responding to behavior related to bias based on race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation.

(6) Techniques for the peaceful resolution of conflict.

SEC. 6. Section 44253.3 of the Education Code is amended to read:

44253.3. (a) The commission shall issue a certificate that authorizes the holder to provide all of the following services to limited-English-proficient pupils:

(1) Instruction for English language development in preschool, kindergarten, grades 1 to 12, inclusive, and classes organized primarily for adults, except when the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a children's center instructional permit pursuant to Sections 8363 and 44252.7, a children's center supervision permit pursuant to Section 8363, or a designated subjects teaching credential in adult education pursuant to Section 44260.2. If the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a children's center instructional permit, or a children's center supervision permit, then instruction for English language development shall be limited to the programs authorized by that permit. If the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a designated subjects teaching credential in adult education, then instruction for English language development shall be limited to classes organized primarily for adults.

(2) Specially designed content instruction delivered in English in the subjects and at the levels authorized by the teacher's prerequisite credential or permit used to satisfy the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3.

(b) The minimum requirements for the certificate shall include all of the following:

(1) Possession of a valid California teaching credential, services credential, children's center instructional permit, or children's center supervision permit which credential or permit authorizes the holder to provide instruction to pupils in preschool, kindergarten, any of grades 1 to 12, inclusive, or classes primarily organized for adults, except for the following:

(A) Emergency credentials or permits.

(B) Exchange credentials as specified in Section 44333.

(C) District intern certificates as specified in Section 44325.

(D) Sojourn certificated employee credentials as specified in Section 44856.

(E) Teacher education internship credentials as specified in Article 3 (commencing with Section 44450) of Chapter 3.

(2) Passage of one or more examinations that the commission determines are necessary for demonstrating the knowledge and skills required for effective delivery of the services authorized by the certificate.

(3) Completion of at least six semester units, or nine quarter units, of coursework in a second language at a regionally accredited institution of postsecondary education. The commission shall establish minimum standards for scholarship in the required coursework. The commission shall also establish alternative ways in which the requirement can be satisfied by language-learning experience that creates an awareness of the challenges of second-language acquisition and development.

(c) Completion of coursework in human relations in accordance with the commission's standards of program quality and effectiveness that includes, at minimum instruction in the following:

(1) The nature and content of culture.

(2) Cross cultural contact and interactions.

(3) Cultural diversity in the United States and California.

(4) Providing instruction responsive to the diversity of the student population.

(5) Recognizing and responding to behavior related to bias based on race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation.

(6) Techniques for the peaceful resolution of conflict.

(d) The commission shall establish alternative requirements for a teacher to earn the certificate, which shall be awarded as a supplementary authorization pursuant to subdivision (e) of Section 44225.

(e) The certificate shall remain valid as long as the prerequisite credential or permit specified in paragraph (1) of subdivision (b) of Section 44253.3 remains valid.

SEC. 7. Section 628 of the Penal Code is amended to read:

628. It is the intent of the Legislature in enacting this section to ensure that schools, school districts, local government, and the Legislature have sufficient data and information about the type and frequency of crime, including hate motivated incidents and hate crimes, occurring on school campuses to permit development of effective programs and techniques to combat crime on school campuses.

SEC. 8. Section 628.1 of the Penal Code is amended to read:

628.1. (a) By June 30, 1995, the State Department of Education, in consultation with the Department of Justice and a representative selection of school districts and county offices of education which

currently compile school crime statistics, shall develop a standard school crime reporting form for use by all school districts and county offices of education throughout the state. No individual shall be identified by name or in any other manner on this reporting form. The form shall define what constitutes the criminal activity required to be reported and shall include, but not be limited to, all of the following:

(1) Description of the crime or incident, including hate motivated incidents or hate crimes.

(2) Victim characteristics.

(3) Suspect characteristics, if known.

(b) For purposes of this section the following definitions shall apply:

(1) ''Hate motivated incident'' means an act or attempted act which constitutes an expression of hostility against a person or property or institution because of the victim's real or perceived race, religion, disability, gender, nationality, or sexual orientation. This may include using bigoted insults, taunts, or slurs, distributing or posting hate group literature or posters, defacing, removing, or destroying posted materials or announcements, posting or circulating demeaning jokes or leaflets.

(2) ''Hate crime'' means an act or attempted act against the person or property of another individual or institution which in any way manifest evidence of hostility toward the victim because of his or her actual or perceived race, religion, disability, gender, nationality, or sexual orientation. This includes, but is not limited to, threatening telephone calls, hate mail, physical assault, vandalism, cross burning, destruction of religious symbols, or fire bombings.

SEC. 9. Section 628.2 of the Penal Code is amended to read:

628.2. (a) On forms prepared and supplied by the State Department of Education, each principal of a school in a school district and each principal or director of a school, program, or camp under the jurisdiction of the county superintendent of schools shall forward a completed report of crimes committed, including hate motivated incidents and hate crimes as defined in paragraphs (1) and (2) of subdivision (b) of Section 628.1, on school or camp grounds at the end of each reporting period to the district superintendent or county superintendent of schools, as the case may be.

(b) The district superintendent, or, as appropriate, the county superintendent of schools, shall compile the school data and submit the aggregated data to the State Department of Education not later than February 1 for the reporting period of July 1 through December 31, and not later than August 1 for the reporting period of January 1 through June 30.

(c) The superintendent of any school district that maintains a police department pursuant to Section 39670 of the Education Code may direct the chief of police or other administrator of that department to prepare

the completed report of crimes for one or more schools in the district, to compile the school data for the district, and to submit the aggregated data to the State Department of Education in accordance with this section. If the chief of police or other designated administrator completes the report of crimes, the chief of police or other designated administrator shall provide information to each school principal about the school crime reporting program, the crime descriptions, including hate motivated incidents and hate crimes as defined in paragraphs (1) and (2) of subdivision (b) of Section 628.1, included in the reporting program, the reporting guidelines, and the required documentation identified by the State Department of Education for each crime description.

(d) The State Department of Education shall distribute, upon request, to each school district governing board, each office of the county superintendent of schools, each county probation department, the Attorney General, the Fair Employment and Housing Commission, county human relations commissions, civil rights organizations, and private organizations, a summary of the statewide aggregated data. The department also shall distribute, upon request, to each office of the county superintendent of schools, each county sheriff, and each county probation department, a summary of that county's school district reports and county reports. This information shall be supplied not later than March 1 of each year for the previous school year. The department shall also submit to the Legislature a summary of the statewide aggregated data not later than March 1 of each year for the previous school year. In addition, commencing with the second annual report, the department shall identify and analyze trends in school crime by comparing the numbers and rates of crimes and the resulting economic losses for each year against those of previous years.

(e) All school district, county, and statewide reports prepared under this chapter shall be deemed public documents and shall be made available to the public at a price not to exceed the actual cost of duplication and distribution.

SEC. 10. Section 628.5 of the Penal Code is amended to read:

628.5. The Legislature hereby recognizes that all pupils enrolled in California public schools have the inalienable right to attend classes on campuses that are safe, secure, and peaceful. The Legislature also recognizes the importance of accurate school crime data, including data on hate motivated incidents and hate crimes as defined in paragraphs (1) and (2) of subdivision (b) of Section 628.1, in developing and implementing school safety strategies and programs.

The State Department of Education, in consultation with school districts and county offices of education, shall identify guidelines for reporting and documentation for validating the incidents of each crime description contained on the standard school crime reporting forms

prepared pursuant to Sections 628.1 and 628.2. Reporting guidelines and documentation for validation criteria shall be established for each crime description, including, but not limited to, all of the following: battery, assault with a deadly weapon, graffiti, homicide, sex offenses, robbery, extortion, drug and alcohol offenses, possession of weapons, destructive devices, arson, burglary, theft, vandalism, and hate motivated incidents and hate crimes as defined in paragraphs (1) and (2) of subdivision (b) of Section 628.1.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 956

An act to amend Section 530.5 of, and to add Section 530.6 to, the Penal Code, relating to identity theft.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person without the authorization of that person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars ($1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars ($10,000), or both that imprisonment and fine.

(b) ''Personal identifying information,'' as used in this section, means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification

number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.

(c) In any case in which a person willfully obtains personal identifying information of another person without the authorization of that person, and uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

SEC. 2. Section 530.6 is added to the Penal Code, to read:

530.6. (a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts or, if the suspected crime was committed in a different jurisdiction, refer the matter to the law enforcement agency where the suspected crime was committed for an investigation of the facts.

(b) A person who reasonably believes that he or she is the victim of identity theft may petition a court for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for or convicted of a crime under the victim's identity, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense. If the petitioner is found factually innocent, the court shall issue an order certifying this determination. The Judicial Council of California shall develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

SEC. 3. 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 957

An act to amend Section 50675.4 of, and to add Section 50898.2 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 50675.4 of the Health and Safety Code is amended to read:

50675.4. (a) To be eligible to receive a loan, a proposed project shall involve one or more of the following activities:

(1) The development and construction of a new transitional or rental housing development.

(2) The rehabilitation, or acquisition and rehabilitation, of a transitional or rental housing development.

(3) The conversion of a nonresidential structure to a transitional or rental housing development.

(b) In the case of rehabilitation projects, to be eligible to receive a loan, the loan shall be necessary to avoid increases in monthly debt service that have either of the following effects:

(1) Result in rent increases causing permanent displacement of persons of lower income residing in the development prior to rehabilitation.

(2) Make it economically infeasible to accept subsidies available to provide affordable rents to persons of lower income, if the sponsor agrees to accept the subsidies.

(c) To be eligible to receive a loan, the sponsor shall agree to both of the following:

(1) To set and maintain affordable rent levels for assisted units.

(2) To the payment of prevailing wage rates with respect to construction assisted through the program. In implementing this paragraph, it is the intent of the Legislature that this requirement apply to construction work that is dependent on the commitment of program funds in order for construction to proceed. Notwithstanding any other provision of law, the department's enforcement responsibilities shall be limited to the imposition of this requirement through the lending

documents. The department shall require, as a condition of loan closing, a signed certificate that prevailing wages have been, or will be, paid in conformance with the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the Labor Code and that labor records shall be made available to any enforcement agency upon request. The requirements of this paragraph shall not apply to projects for which program funds are used exclusively to achieve lower rents and to pay associated administrative costs.

SEC. 2. Section 50898.2 is added to the Health and Safety Code, to read:

50898.2. (a) Funds awarded pursuant to Item 2240-107-0001 of Section 2.00 of the Budget Act of 2000 for the purposes of the Downtown Rebound Program established pursuant to this chapter shall not be subject to the requirements of Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(b) The department may use up to 5 percent of the amounts appropriated for this program for administration.

(c) With respect to the appropriation in Item 2240-107-0001 of Section 2.00 of the Budget Act of 2000 for the Downtown Rebound Program established pursuant to this chapter, the following provisions shall apply:

(1) Seventy-six percent of that appropriation shall be used by the department for the purpose of making loans to project sponsors for the adaptive reuse of vacant or underused commercial or industrial structures into residential rental housing units for initial rental to households having an income not exceeding 150 percent of the area median income, subject to the following restrictions:

(A) Loans for units not subject to subparagraph (D) shall be at 5 percent simple interest. Loans for units subject to subparagraph (D) shall be at 3 percent simple interest. All principal and interest shall be due and payable in 20 years.

(B) Assistance for units not subject to subparagraph (D) shall not exceed twenty thousand dollars ($20,000) per unit. Assistance for units subject to subparagraph (D) shall not exceed forty thousand dollars ($40,000) per unit.

(C) The amount of the loan, in combination with all debt recorded in a senior position to the loan, shall not exceed 90 percent of the appraised after-rehabilitation value of the security for the loan.

(D) Twenty percent of the units in the project shall be reserved for households having an income equal to 50 percent or less of the area median income, or 40 percent of the units shall be reserved for households having an income equal to 60 percent or less of the area median income. The department shall ensure the continued affordability of all units designated by the sponsor to fulfill these requirements for a

period of 20 years. However, notwithstanding subparagraph (A), if assistance is provided for these units through any program funded through Chapter 6.7 (commencing with Section 50675) of Part 2, the units shall be subject to the use restrictions, limitations, and provisions contained in that chapter. These units shall be reasonably distributed within each building contained in the project, with no less than 10 percent of the units in each building fulfilling the requirements of this subdivision.

(E) The sponsor shall agree to the payment of prevailing wage rates with respect to construction assisted through the program. In implementing this subparagraph, it is the intent of the Legislature that this requirement apply to construction work that is dependent on the commitment of program funds in order for construction to proceed. Notwithstanding any other provision of law, the department's enforcement responsibilities shall be limited to the imposition of this requirement through the lending documents. The department shall require, as a condition of loan closing, a signed certificate that prevailing wages have been, or will be, paid in conformance with the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of the Labor Code and that labor records shall be made available to any enforcement agency upon request.

(2) Two million four hundred thousand dollars ($2,400,000) of that appropriation shall be used by the department for planning grants as specified in subdivision (b) of Section 50898.1.

(3) The balance of that appropriation shall be available for uses authorized by subdivision (a) of Section 50898.1.

SEC. 3. Section 50898.2 of the Health and Safety Code, as added by Section 2 of this act, shall supersede Section 50898.2 of the Health and Safety Code, as added by Chapter 83 of the Statutes of 2000, which section shall not become operative.

CHAPTER 958

An act to amend Sections 15301, 15301.3, and 15301.6 of the Government Code, relating to temporary shelter.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 15301 of the Government Code is amended to read:

15301. (a) The El Centro and Calexico armories in Imperial County; the Culver City, Glendale, Inglewood, Long Beach 7th Street, Pomona, Sylmar, and West Los Angeles Federal Avenue armories in Los Angeles County; the San Rafael armory in Marin County; the Merced armory in Merced County; the Fullerton and Santa Ana armories in Orange County; the Roseville armory in Placer County; the Corona, Indio, and Riverside armories in Riverside County; the El Cajon, Escondido, and Vista armories in San Diego County; the San Mateo armory in San Mateo County; the Santa Barbara and Santa Maria armories in Santa Barbara County; the Gilroy, San Jose Hedding Street, and Sunnyvale armories in Santa Clara County; the Santa Cruz and Watsonville armories in Santa Cruz County; the Redding armory in Shasta County; the Petaluma and Santa Rosa armories in Sonoma County; and the Oxnard and Ventura armories in Ventura County, shall be made available to these counties or any city in these counties for the purpose of providing temporary shelter for homeless persons during the period from October 15 through April 15 each year.

(b) The Adjutant General may, in his or her sole discretion, use alternate armories as may be necessary to meet the operational needs of the Military Department. Additionally, any county or city, including those not listed in subdivision (a), may use any armory within its jurisdiction subject to the approval of the Adjutant General.

(c) Subject to appropriation in the annual Budget Act, the Adjutant General may increase or decrease the number of days of operation among all of the armories funded in any year to best meet cold weather demands as they develop. The Adjutant General shall periodically report to the counties authorized to receive funds on the ongoing availability of remaining funded shelter days.

SEC. 2. Section 15301.3 of the Government Code is amended to read:

15301.3. Any county or city authorized in Section 15301 electing to use a state armory or armories for the purpose of this chapter, in consultation with the Community Advisory Committee appointed pursuant to Section 438 of the Military and Veterans Code or, if no committee has been appointed, in consultation with the Adjutant General, shall obtain a license from the Military Department with the following requirements:

(a) The county or city obtaining a license shall be solely responsible for measures and costs required to comply with state and local health and safety codes during the license periods.

(b) The county or city obtaining a license shall be responsible for all legal liabilities during the license periods and the state shall be held harmless in each case.

(c) Except as provided in the annual Budget Act, the county or city obtaining a license shall be responsible for all costs of providing shelter in the state armory or armories to homeless persons during the license periods, including, but not limited to, all costs for minor emergency repairs, including, but not limited to, plumbing and electrical work, and shall reimburse the Military Department for all costs of providing armories for shelter operations including, but not limited to, utilities, building maintenance and repair, administrative costs, and for National Guardsman for the security of military equipment and property.

(d) The county or city obtaining a license shall be solely responsible for alternative housing arrangements, including relocation measures and transportation, for homeless persons housed in state armories during the license periods, upon notification from the Military Department that the armory or armories shall be required for military activities or emergency purposes as announced by the Governor. The Military Department or the Governor shall determine the evacuation deadline.

(e) The county or city obtaining a license shall be responsible for providing uniformed security personnel from one hour before the shelter opens until one hour after lights out. The county or city shall also ensure that officers from the local law enforcement agency with jurisdiction over the armory will conduct periodic visits to the armory on each night of operation.

(f) The county or city obtaining a license shall be responsible for providing janitorial service from a licensed contractor or qualified civil service employees in order to meet state health and sanitation standards for restrooms and shower facilities.

SEC. 3. Section 15301.6 of the Government Code is amended to read:

15301.6. (a) Each county that obtains a license under Section 15301.3 shall establish a local shelter advisory committee, which shall have all of the following responsibilities:

(1) To address issues related to shelter operation, including, but not limited to, sanitation and security issues.

(2) To ensure that the shelter maintains a ''good neighbor policy.''

(3) To assist in finding long-term solutions for providing housing for the homeless to reduce the degree to which state armories are utilized as sites for housing homeless persons.

(b) The county shall select the advisory committee, which shall include representatives from the county and cities within the county in which armories are utilized, local government planning departments, the California National Guard, homeless service providers, local peace officers, representatives of affected community organizations, and advocates for homeless persons. Counties may utilize existing homeless task forces, including, but not limited to, a task force for purposes of the

Federal Emergency Management Agency (FEMA), if the membership of the task force has representatives that meet all of the requirements of this subdivision.

CHAPTER 959

An act to add Section 233.8 to the Education Code, relating to hate violence.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 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 number of hate crimes against pupils is dramatically increasing throughout the state.

(b) Hate crimes impact not only the individuals or group victimized but also have a dramatic impact on the school learning environment for all pupils.

(c) Pupil achievement depends, in part, on a safe learning environment.

(d) Understanding and identifying hate crimes on school campuses and determination of motive requires specialized training of school staff.

(e) To address hate crimes, educational programs have been created to expose pupils to the dynamics and history of racism and prejudice and issues of intolerance, and to foster ethnic sensitivity and counter hatred.

SEC. 2. Section 233.8 is added to the Education Code, to read:

233.8. (a) The State Department of Education shall provide regional training to assist school district personnel in the identification and determination of hate violence on school campuses.

(b) (1) A grant program for school districts shall be established by the department for the purpose of enabling pupils and teachers to participate in educational programs focused on fostering ethnic sensitivity, overcoming racism and prejudice, and countering hatred and intolerance. It is the intent of the Legislature that the grants be awarded on a competitive basis with similar sized school districts and county offices of education competing against each other for grant funds. The Superintendent of Public Instruction shall establish grant competition bands as follows:

(A) Districts with less than 2,501 average daily attendance.

(B) Districts with more than 2,500 average daily attendance but less than 5,001.

(C) Districts with more than 5,000 average daily attendance but less than 15,001.

(D) Districts with more than 15,000 average daily attendance but less than 30,001.

(E) Districts with more than 30,000 average daily attendance.

(F) County offices of education.

(2) The Superintendent of Public Instruction shall allocate the appropriated funds for competitive grants to each of the competitive bands based on the amount of average daily attendance in all districts in the competitive range compared to the statewide average daily attendance in all school districts and county offices of education.

The grant program is not required to be implemented under this section unless funds are appropriated for that purpose.

SEC. 3. Subject to funding being appropriated in the Budget Act of 2000 for the purposes of this act, the State Department of Education shall allocate funding according to the following schedule:

(a) One hundred fifty thousand dollars ($150,000) to contract for the services of an organization with the experience to provide, pursuant to Section 233.8 of the Education Code, training programs throughout the state to assist school district personnel in the identification and determination of hate violence on school campuses.

(b) Two million dollars ($2,000,000) for the purpose of providing grants to school districts to enable pupils and teachers to participate in educational programs pursuant to Section 233.8 of the Education Code, that foster ethnic sensitivity, overcoming racism and prejudice, and countering hatred and intolerance.

CHAPTER 960

An act to amend Section 44670.3 of the Education Code, relating to school development plans.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 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 diversity in the classrooms of California is increasing. People from more than 140 countries make their homes in California and more than 90 languages are spoken in our public schools.

(b) California schools seek mutual respect amidst our differences in race, religion, national origin, socioeconomic status, gender, and other characteristics.

(c) The quest for equal treatment in California is more than a goal; it is becoming a necessity in a society in which yesterday's minorities will form tomorrow's majority.

(d) Most individuals prosecuted for committing a hate crime against a minority are between the ages of 16 to 20, inclusive.

(e) Public schools face a growing need for methods to combat latent and overt offensiveness and potential violence.

SEC. 2. Section 44670.3 of the Education Code is amended to read:

44670.3. School development plans authorized by this article shall include staff development activities directly related to the annual school improvement objectives developed in accordance with Section 44670.4, and shall assist personnel at the local school site to do the following:

(a) Improve instructional practices in each subject, strengthen subject matter knowledge, and improve support services based on a continuing examination of instruction and learning in the subject areas offered by the school. That examination shall include research, if any, based on classroom experience that is conducted by teachers in accordance with those research standards and procedures that are generally accepted in higher education.

(b) Ensure that subject matter requirements, instructional strategies, and instructional materials meet uniformly high academic standards and are responsive to the diversity among pupil learning needs and styles in a multicultural society, including underachieving pupils and pupils with exceptional abilities or needs.

(c) Review, select, and learn to utilize curricula and instructional materials in a wide variety of subject areas, giving consideration to the state-recommended curriculum framework and model curriculum standards in each subject matter area.

(d) Address ways in which educational technology can support the instructional program.

(e) Improve the school and classroom environments, including working relationships among pupils, parents and guardians, teachers, and other community members of various ethnic and cultural backgrounds.

(f) Develop tolerance programs that capitalize on the positive potential of ethnic diversity and offer educators solutions for confronting problems generated by a multiethnic constituency, with the following goals:

(1) Building a greater awareness among educators of the issues of tolerance and diversity.

(2) Exposing working professionals to the dynamics of prejudice and discrimination that impede effective learning.

(3) Providing a broad range of multicultural viewpoints that may influence relationships among pupils, and between pupils and teachers.

(4) Providing solutions for conflicts that result from multiethnic disputes.

(g) Improve pupil attendance.

CHAPTER 961

An act to add Article 4.5 (commencing with Section 75085) to Chapter 11 of Title 8 of the Government Code, relating to judges' retirement.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Article 4.5 (commencing with Section 75085) is added to Chapter 11 of Title 8 of the Government Code, to read:

Article 4.5. Extended Service Incentive Program

75085. The Extended Service Incentive Program is hereby created to provide an incentive to judges who are eligible to receive the maximum retirement benefit to remain in public service. The program is intended to address the growing problem of judges retiring when they are first eligible to do so. The people of California are continuing to lose vital judicial resources and experience when long-serving judges leave public service. The Extended Service Incentive Program shall provide certain judges who retire with more than 23 years of creditable service with a lump sum payment in addition to their normal monthly retirement allowance. It is intended that the program shall operate at no cost to the state, due to the anticipated delayed retirement of the participating judges.

75085.1. The design and administration of the Extended Service Incentive Program shall conform to the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

75085.2. If any provision of this article or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

75085.3. The board shall implement the Extended Service Incentive Program pursuant to the provisions of this article no later than July 1, 2001, unless the board determines, by resolution, that the implementation tasks cannot be completed until a later date, in which case the board shall implement the program pursuant to this article no later than January 1, 2002.

75085.4. The board may adopt regulations to implement the program.

75085.5. ''Program'' means the Extended Service Incentive Program.

75085.6. ''Extended service calculation date'' means the later of (a) January 1, 2001, or (b) the date the judge first becomes eligible to participate in the program pursuant to Section 75086.

75085.7. ''Extended service period'' means a period of time commencing on the extended service calculation date and ending (a) on the date of the judge's retirement or his or her earlier termination of service, as provided in subdivision (b) of Section 75086.1, or (b) 120 months after the extended service calculation date, whichever is earlier. Nothing in this article shall be deemed to prohibit a judge from continuing to perform creditable service beyond the extended service period.

75085.8. ''Program payment'' means the amount to be paid to the judge as a result of his or her participation in the program, as calculated in Section 75087.

75086. A judge shall be eligible to participate in the program if the judge has performed at least 20 years of creditable service and is at least 60 years of age.

75086.1. (a) A judge described in Section 75086 shall be entitled to receive a program payment at the time of his or her termination of employment and retirement if the judge continued to perform creditable service for at least 36 months after the extended service calculation date.

(b) Notwithstanding subdivision (a), if a judge described in Section 75086 ceases to perform creditable service within 36 months after the extended service calculation date due to the judge's death or disability, or because the judge was unsuccessful in his or her efforts to be reelected or retained in office, the judge, or the judge's beneficiary, shall be entitled to receive a program payment. No program payment shall be distributed pursuant to this subdivision prior to the implementation of the program as provided in Section 75085.3.

75086.2. The judge's retirement contribution shall continue during the extended service period.

75087. The program payment shall be calculated by the system as an aggregate amount equal to a percentage of the judge's monthly salary for each month of the extended service period, taking into account any

salary increases occurring during the period, plus monthly interest thereon at a rate indexed to 30 year United States Treasury Bonds. For the first to the 60th month, inclusive, of the extended service period, the calculation amount shall be 20 percent of the judge's monthly salary. For the 61st to the 120th month, inclusive, of the extended service period, the calculation amount shall be 8 percent of the judge's monthly salary.

75088. Upon the termination of employment and retirement of a judge who is entitled to a program payment, as described in subdivision (a) of Section 75086.1, the judge shall receive the program payment, calculated pursuant to Section 75087, in the form of a single, lump-sum payment, in addition to any other retirement benefit to which the judge is entitled pursuant to this chapter.

75088.3. The required beginning date of distributions that reflect the entire interest of the judge shall be as follows:

(a) In the case of a lump-sum distribution to the judge, the lump-sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the judge attains the age of 70 and one-half years or the calendar year in which the judge terminates employment.

(b) In the case of a program payment payable on account of the judge's death, the distribution shall be made no later than December 31 of the calendar year in which the fifth anniversary of the judge's date of death occurs unless the beneficiary is the judge's spouse in which case distributions shall commence on or before the later of either:

(1) December 31 of the calendar year immediately following the calendar year in which the judge dies.

(2) December 31 of the calendar year in which the judge would have attained the age of 70 and one-half years.

75088.4. A judge described in Section 75086 may, at any time, designate a beneficiary to receive the benefits that may be payable to his or her beneficiary or estate under this article by a writing filed with the board, except that no designation may be made in derogation of the community property share of any nonmember spouse when any benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for division pursuant to Section 2610 of the Family Code. If a judge has not filed a beneficiary designation with the board, all benefits payable pursuant to this article shall be paid to the survivors of the judge in the order set forth in Section 21493.

75089. Notwithstanding any other provision of law, a judge shall have no vested rights under this article unless and until the judge satisfies the eligibility requirements specified in Section 75086. Nothing in this article shall be construed to limit the right of the Legislature to

subsequently modify or repeal any provision of this article as it relates, or may relate, to all other judges subject to this chapter.

75089.1. The Judicial Council shall, on or before January 1, 2006, prepare a report to the Legislature that analyzes the effects of the Extended Service Incentive Program, including the effect, if any, of the program on the length of service of judges. The report shall include recommendations on ways to encourage long service by judges in the Judges' Retirement System II, including whether and how to establish an Extended Service Incentive Program for members of the Judges' Retirement System II. The recommendations should also ensure that the Judges' Retirement System and the Judges' Retirement System II provide appropriate incentives to attract and retain judges of the highest quality from all areas of legal practice.

In addition, the board shall, on or before January 1, 2006, conduct an actuarial valuation to determine the costs of the program and report the results thereof to the Legislature.

CHAPTER 962

An act to amend Sections 1798.61 and 1798.75 of, and to add Section 1798.69 to, the Civil Code, relating to information practices.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 1798.61 of the Civil Code is amended to read:

1798.61. (a) Nothing in this chapter shall prohibit the release of only names and addresses of persons possessing licenses to engage in professional occupations.

(b) Nothing in this chapter shall prohibit the release of only names and addresses of persons applying for licenses to engage in professional occupations for the sole purpose of providing those persons with informational materials relating to available professional educational materials or courses.

SEC. 2. Section 1798.69 is added to the Civil Code, to read:

1798.69. (a) Except as provided in subdivision (b), the State Board of Equalization may not release the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the State Board of Equalization except to the extent necessary to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code.

(b) Nothing in this section shall prohibit the release by the State Board of Equalization to, or limit the use by, any federal or state agency, or local government, of any data collected by the board that is otherwise authorized by law.

SEC. 3. Section 1798.75 of the Civil Code is amended to read:

1798.75. This chapter shall not be deemed to supersede Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, except as to the provisions of Sections 1798.60, 1798.69, and 1798.70.

CHAPTER 963

An act relating to fuel supplies.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. The State Energy Resources Conservation and Development Commission, in consultation with the State Fire Marshal, shall study the feasibility of financing, constructing, and maintaining a new pipeline, or utilizing or expanding the capacity of existing pipelines, to transport motor vehicle fuel or its components from the Gulf Coast to California. The study shall assess the viability of pipeline transportation to directly or indirectly increase California's supply of gasoline that complies with California's fuel specification regulations and the potential impact on gasoline prices, the environment, and other issues identified by the commission. The study shall include a discussion of the ways in which the state may facilitate the use of a pipeline to transport motor vehicle fuel or its components into California, including any federal or state funds or tax credits that could be used to assist in constructing the new pipeline or expanding the capacity of existing pipelines. The study shall be conducted in conjunction with any other studies required by acts enacted during the 2000 portion of the 1999–2000 Regular Session dealing with gasoline prices, and shall be submitted to the Legislature and the Attorney General by January 31, 2002.

CHAPTER 964

An act to amend Sections 5811, 5812, 5813, 5814, 5815, 5816, and 5817 of, and to add Section 5815.5 to, the Public Resources Code, relating to wetlands.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 5811 of the Public Resources Code is amended to read:

5811. The Legislature hereby finds and declares all of the following:

(a) The remaining wetlands of this state are of increasingly critical economic, aesthetic, and scientific value to the people of California, and that the need exists for an affirmative and sustained public policy and program directed at their preservation, restoration, and enhancement, in order that wetlands shall continue in perpetuity to meet the needs of the people.

(b) Although the state established a specific plan in 1979 for the protection, acquisition, restoration, preservation, and management of wetlands to be implemented through the year 2000, a need to update this plan now exists, and the process should include the identification of priorities for wetland conservation through the year 2020.

(c) California has established a successful program of regional, cooperative efforts to protect, acquire, restore, preserve, and manage wetlands. These programs include, but are not limited to, the Central Valley Habitat Joint Venture, the San Francisco Bay Joint Venture, the Southern California Wetlands Recovery Project, and the Inter-Mountain West Joint Venture. These public-private partnerships, wherever practicable, shall be the primary means of achieving the objectives of this chapter.

(d) Active and voluntary involvement by private landowners in wetlands conservation, restoration, and enhancement contributes significantly to the long-term availability and productivity of wetlands in the state.

(e) With the passage of Propositions 12 and 13 in March 2000, the people of California have provided the state with unprecedented financial resources to acquire, restore, preserve, and manage wetlands. There is a pressing need for state agencies that are responsible for wetlands conservation to develop and disseminate a wetlands conservation strategy for review by the general public, for use by the Legislature in the annual budget process, for use by local public agencies in pursuing local and regional wetlands conservation programs, and for

use by state agencies updating existing programs for acquiring, restoring, preserving, and managing wetlands resources.

SEC. 2. Section 5812 of the Public Resources Code is amended to read:

5812. As used in this chapter, unless the context clearly requires a different meaning, the following terms mean:

(a) ''Agency'' means the Resources Agency.

(b) ''Departments'' means the Department of Parks and Recreation, the Department of Fish and Game, and the California Coastal Conservancy.

SEC. 3. Section 5813 of the Public Resources Code is amended to read:

5813. (a) Nothing in this chapter abrogates or supersedes any existing local, state, or federal law or policy pertaining to wetlands, or establishes maximum or minimum standards or any other requirement for wetlands fill or mitigation. Additionally, nothing in this chapter shall be construed to create any new legal obligations for private landowners, or for lands owned by the United States Department of Defense, for wetlands inventories, wetlands management requirements, or any other regulatory requirements pertaining to wetlands use or conversion.

(b) Any of the departments may acquire interests in real property less than the fee, including, but not limited to, acquisition of development rights, when it determines that acquisition of the lesser interest will accomplish the purposes of this chapter in furthering the public's interest in the protection, preservation, restoration, and enhancement of wetlands.

SEC. 4. Section 5814 of the Public Resources Code is amended to read:

5814. (a) The agency shall update all of the state's existing wetlands inventory resources in order to prepare a study to accomplish the following goals:

(1) To identify the restoration and enhancement opportunities in the state for wetlands in public ownership.

(2) To identify means of protecting and enhancing existing wetlands in public ownership and to identify additional recreational benefits and opportunities that are compatible with the primary goal of maximizing the habitat value of wetlands.

(3) To identify opportunities for voluntary public-private partnerships for wetlands restoration, enhancement, and management on private lands.

(4) To identify those wetlands of particular significance in the state that are not currently in public ownership for which there is believed to be a willing seller.

(5) To identify additional recreational benefits that can be provided on existing, restored, or newly created wetlands in public ownership or for which there is a cooperative agreement for public use by a private landowner and a local, state, or federal agency.

(6) To provide a basis for the inclusion of wetlands data and information in the California Continuing Resources Investment Strategy Project (CCRISP), which was funded in the Budget Act of 2000.

(7) To identify, utilizing existing resources, wetlands on lands owned by federal agencies in California and those wetlands that are protected by existing wetlands management and conservation mandates imposed by federal law.

(8) To identify, in conjunction with the Office of Planning and Research, those instances where lead agencies have adopted mitigation measures pursuant to Division 13 (commencing with Section 21000), or natural community conservation plans prepared pursuant to Chapter 10 (commencing with Section 2800) of the Fish and Game Code, that utilize or reference wetland resources located on lands owned by the United States Department of Defense.

(b) The agency shall consult and cooperate with counties cities, other appropriate state and federal agencies with an interest in wetlands resources, and willing landowners in conducting the study. The study shall be submitted to the Legislature not later than January 1, 2003, and shall set forth, for consideration by the Legislature, a plan for the acquisition, protection, preservation, restoration, and enhancement of wetlands, including funding requirements and the priority status of specific proposed wetlands projects.

SEC. 5. Section 5815 of the Public Resources Code is amended to read:

5815. The agency, in preparing the wetlands priority plan and program pursuant to Section 5814, shall give particular recognition to the conservation, recreation, and open-space plans and programs of local agencies, and shall, wherever feasible and appropriate, identify and devise cooperative means for planning and for the protection and preservation of wetlands by local agencies.

SEC. 5.5. Section 5815.5 is added to the Public Resources Code, to read:

5815.5. In compiling data for the wetlands inventory required by Section 5814, the agency and the departments shall, as a first priority, rely on existing sources of information and data. If the agency determines that ground surveys are needed to supplement or correct aerial and satellite imagery, the agency and the department shall obtain the permission of any private landowner before entering his or her property to gather information to complete the wetlands inventory.

SEC. 6. Section 5816 of the Public Resources Code is amended to read:

5816. The agency shall give particular recognition to opportunities for protecting and preserving wetlands lying within, or adjacent to, existing units of the state park system or other state-owned lands protected and managed primarily as wildlife habitat.

SEC. 7. Section 5817 of the Public Resources Code is amended to read:

5817. Any of the departments may enter into operating agreements with cities, counties, and districts for the management and control of wetlands, or interests in wetlands, acquired pursuant to this chapter. However, any agreement shall ensure the protection and preservation of the wetlands and ensure the right of use and enjoyment of the wetlands by the people of the state. Further, any agreement entered into by the Department of Fish and Game pursuant to this section shall provide that public use of lands and waters subject to the agreement shall be in accordance with regulations adopted by the Fish and Game Commission.

SEC. 8. The amendments to Section 5814 by this act shall only be required to be implemented if until the Secretary of the Resources Agency certifies, in writing, to the Secretary of State that sufficient funds for implementation of those amendments have been appropriated for that purpose in the annual Budget Act or other legislation.

CHAPTER 965

An act to add Chapter 17 (commencing with Section 7440) to Title 7 of Part 3 of the Penal Code, relating to children of incarcerated women.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 17 (commencing with Section 7440) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 17. CHILDREN OF INCARCERATED PARENTS

7440. The California Research Bureau in the California State Library shall conduct a study of the children of women who are incarcerated in state prisons. The California Research Bureau shall design and complete the study, surveying selected state prisoners in

cooperation with the Department of Corrections, and reviewing the records of local agencies to obtain outcome information about a sample of women prisoners' children.

7441. The purpose of the survey of state prisoners is to determine how many have children and to gather basic information about the children to include the following variables, among others:

(a) Number.
(b) Age.
(c) Siblings.
(d) Location.
(e) Caregiver.
(f) Grade and performance in school.
(g) Medical issues.
(h) Possible delinquency.
(i) Visitation.
(j) Possible involvement in the child welfare system.
(k) Other pertinent information.

7442. (a) The purpose of the review of local agency records, in a representative sample of California counties, is to obtain outcome information about the status of a sample of the children of incarcerated parents and their caregivers.

(b) Women prisoners who participate in the survey sample of state prisoners shall provide written permission allowing the California Research Bureau access to their children's records in regard to school performance, identity of the caretaker responsible for the child, child protective services records, public assistance records, juvenile justice records, and medical records including drug or alcohol use, and mental health. The California Research Bureau shall follow appropriate procedures to ensure confidentiality of the records and to protect the privacy of the survey participants and their children.

(c) County agencies, including members of multidisciplinary teams, and school districts shall permit the California Research Bureau to have reasonable access to records, pursuant to subdivision (b), to the extent permitted by federal law.

(d) Notwithstanding Section 10850 of the Welfare and Institutions Code, the survey required by this section is deemed to meet the research criteria identified in paragraph (3) of subdivision (c) of Section 11977 of the Health and Safety Code, and subdivision (e) of Section 5328 of the Welfare and Institutions Code. For purposes of this study, the research is deemed not to be harmful for the at-risk and vulnerable population of children of women prisoners.

(e) For purposes of the study only, the California Research Bureau is authorized to survey records, reports, and documents described in Section 827 and in paragraph (3) of subdivision (h) of Section 18986.4

of the Welfare and Institutions Code, and information relative to the incidence of child abuse, as provided by Section 11167, among children in the study sample.

(f) School districts shall permit reasonable access to directory information by the California Research Bureau for purposes of this study. The California Research Bureau is deemed an appropriate organization to conduct studies for legitimate educational interests, including improving instruction, for purposes of paragraph (4) of subdivision (b) of Section 4906 of the Education Code. School variables that the California Research Bureau shall survey shall include, but not be limited to, attendance patterns, truancy rates, achievement level, suspension and expulsion rates, and special education referrals.

7443. The California Research Bureau shall follow appropriate procedures to ensure confidentiality of the records and to protect the privacy of the survey participants and their children, and participating agencies. Data compiled from case files shall be coded under an assigned number and not identified by name. Survey questionnaires and coding forms shall be exempt from the public disclosure requirements prescribed by Chapter 3.4 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

7444. The California Research Bureau shall convene an advisory group to assist in designing and administering the study.

7445. The California Research Bureau shall submit a report to the Legislature on or before January 1, 2003, analyzing the findings of its research, upon completion of the study.

(a) Of the funds identified in provision (2) of Item 6120-011-0001 of the 2000-01 State Budget, forty thousand dollars ($40,000) shall be made available, in consultation with the Assembly Rules Committee, to be used for the purposes of this act, including, but not limited to, contracts for outside researchers.

(b) Members of the advisory group convened pursuant to Section 7444 of the Penal Code, shall not receive compensation for their services but shall be reimbursed for travel and per diem expenses incurred while assisting in designing and administering the study required by this act. These expenses may be paid from the forty thousand dollars ($40,000) made available in subdivision (a).

CHAPTER 966

An act to amend Sections 20588, 31461.3, 31657, 31700, 31830, 31831, 31831.2, 31832, 31833, 31834, 31835, 31835.02, 31835.1,

31836, 31837.1, and 31840.2 of, and to add Sections 31461.6 and 31833.1 to, the Government Code, relating to retirement.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 20588 of the Government Code is amended to read:

20588. Notwithstanding any other provision of this article, the board may, pursuant to this section and Section 31657, enter into an agreement with the board of retirement of a county maintaining a county retirement system, for termination of participation of a public agency whose contract has been in effect for at least five years in this system or the state with respect to certain safety members who have ceased to be employed by the public agency and have been employed by a county, fire authority, or district as a result of a transfer of firefighting or law enforcement functions from the public agency to the county, fire authority, or district and inclusion of the former public agency employees in that county retirement system. The agreement shall contain provisions the board finds necessary to protect the interests of this system for determination of the amount, time, manner of transfer of cash or the securities, or both, to be transferred to the county system as representing the actuarial value of the interests in the retirement fund of the public agency and the transferred employees by reason of accumulated contributions credited to that public agency member and the employees transferred. The agreement shall apply only to employees who are employed by the county or district on the effective date of the agreement. All liability of this system with respect to the members transferred under that agreement shall cease and shall become the liability of the county retirement system as of the date of transfer specified in the agreement. Liability of the county retirement system shall be for payment of benefits to transferred employees in accordance with Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3. Any member transferred who becomes a member of a county retirement system upon that transfer date shall be subject to provisions of this part and of Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 extending rights to a member or subjecting him or her to limitations because of membership in another retirement system to the same extent that he or she would have been had he or she been a member of the county retirement system during his or her membership in this system.

This section shall apply only in Los Angeles and Orange Counties.

SEC. 2. Section 31461.3 of the Government Code is amended to read:

31461.3. The average compensation during any period of service as a member of the Public Employees' Retirement System , a member of a retirement system established under this chapter in another county, a member of the State Teachers Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2 shall be considered compensation earnable by a member for purposes of computing final compensation for that member provided:

(1) The period intervening between active memberships in the respective systems does not exceed 90 days, or six months if Section 31840.4 applies.

(2) He or she retires concurrently under both systems and is credited with that period of service under the other system at the time of retirement.

This section shall be applied retroactively under this chapter in favor of any member whose membership in the Public Employees' Retirement System or in a retirement system established under this chapter in any county terminated prior to October 1, 1957, provided that he or she was eligible to and elected deferred retirement therein within 90 days after eligibility for reciprocity, the period intervening between active memberships in the respective systems did not exceed 90 days, or six months if Section 31840.4 applies, and he or she retires concurrently under both systems and is credited with that period of service under the other system at the time of retirement. The limitation of the 90-day or six month period between the active membership in the two retirement systems shall not apply as to an employee who entered the employment in which he or she became a member of the State Employees' Retirement System prior to July 18, 1961; provided he or she entered that employment within 90 days, or six months if Section 31840.4 applies of the termination of employment in the county system whether that employment is by the state or by a county, a city or other public agency which contracts with Public Employees' Retirement System, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2.

SEC. 3. Section 31461.6 is added to the Government Code, to read:

31461.6. ''Compensation earnable'' shall not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the

employee under Section 201 and following of Title 29 of the United States Code.

SEC. 4. Section 31657 of the Government Code is amended to read:

31657. Subject to Section 20588, whenever, as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions performed by a public agency subject to the Public Employees' Retirement Law, any person ceases to be employed by a public agency and is employed by a county, fire authority, or district in which this chapter has become operative, that person shall become a member of the retirement association of a county immediately upon entrance to the county service. That member of the county retirement system shall be entitled to service credit in the county retirement system for the service for which he or she was entitled to credit in the Public Employees' Retirement System at the time of cessation of employment by the public agency, without necessity of payment of any additional contributions in respect to that service, when and if all of the following occur:

(a) The board of retirement receives certification from the Board of Administration of the Public Employees' Retirement System of the service with which the person was entitled to be credited by the Public Employees' Retirement System at the time of cessation of his or her public agency employment.

(b) There is paid into the county retirement fund of the county, an amount equal to the normal contributions of the person to the Public Employees' Retirement System, together with all interest credited thereto, which amount shall be credited to the individual account of the member in the county retirement system, and shall thereafter for all purposes be deemed to be the member's contribution to the county retirement system with respect to the service so certified.

(c) There is paid to the retirement system of the county an amount equal to all contributions of the public agency made to the Public Employees' Retirement System on account of service rendered by the person together with interest credited to the public agency thereto.

(d) The board of retirement elects to apply this section as a prudent means of mitigating against potential adverse financial impact upon the county retirement system from the cost of disability retirements that may be applied for in the future by persons injured while being employed by the county, fire authority, or district after ceasing to be employed by a public agency as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions.

This section shall apply in a county of the first, the second, or the fourteenth class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter

43 of the Statutes of 1961, and Section 28023, as amended by Chapter 1204 of the Statutes of 1971.

SEC. 5. Section 31700 of the Government Code is amended to read:

31700. (a) Any member, whether over or under the minimum age of voluntary service retirement, who leaves county service after completing five years of service or who leaves county service and within 90 days, or six months if Section 31840.4 applies, becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, may elect in writing, within 90 days after establishing eligibility for reciprocity, to leave his or her accumulated contributions in the retirement fund and be granted a deferred retirement allowance to become effective either:

(1) Upon the option of the member, at any time at which he or she could have retired had he or she remained in county service in a full-time position.

(2) Not later than the first day of the month following that in which he or she attains the applicable compulsory retirement age, if any.

(b) Any member who is eligible to be granted a deferred retirement allowance under subdivision (a) because he or she has completed five years of service but who fails to so elect, shall be deemed to have elected a deferred retirement.

(c) Any member, regardless of service, whose retirement system coverage ceases but who does not terminate employment shall leave his or her accumulated contributions in the retirement fund, and interest shall continue to be credited pursuant to Section 31591, until the member retires or terminates employment.

SEC. 6. Section 31830 of the Government Code is amended to read:

31830. The provisions of this article are intended to encourage career public service by granting reciprocal retirement benefits to members who are entitled to retirement rights or benefits from two or more retirement systems established under this chapter or from a retirement system established under this chapter and the Public Employees' Retirement System, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and to delineate the financial obligations of each system and related political entity so that no system or political entity shall be liable for more than its just financial obligation.

SEC. 7. Section 31831 of the Government Code is amended to read:

31831. Any member, whether over or under the minimum age of service retirement, who leaves county service and within 90 days or six months if Section 31840.4 applies thereafter becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, regardless of the amount of county service, may elect deferred retirement pursuant to Article 9 of this chapter, except that he or she may not, after that election, rescind the election or withdraw any of his or her accumulated contributions while a member of such other system.

SEC. 8. Section 31831.2 of the Government Code is amended to read:

31831.2. Any member who left county or district service on or before December 31, 1974, and became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System, who did not elect to, or was not eligible to, leave his contributions on deposit pursuant to Article 9 (commencing with Section 31700) may now elect to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) by redepositing in the retirement fund of the county or district he left the amount of accumulated contributions and interest he withdrew from such retirement fund plus regular interest thereon from date of separation.

Any such member whose accumulated contributions are on deposit as provided in this section and any other member who left county or district service on or before December 31, 1974, who became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System and who elected to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) shall be eligible for the benefits provided in this article, and for purposes of such benefits shall be deemed to have entered membership in such other system within 90 days, or six months if Section 31840.4 applies, of his separation from county or district employment. The deferred retirement allowance for such member shall be determined in accordance with the provisions of this chapter applicable to members retiring directly from county employment on the date of his retirement. Any member who qualifies for a reduced age at entry pursuant to this section shall be entitled to use such age only from and after the date he completes the redeposit as provided in this section or, if he elected to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700), from and after the date he notifies the board in writing

that he desires the benefits of this section. This section shall not apply to members who are retired or who are not in service of an employer making him a member of a retirement system established under this chapter or of the Public Employees' Retirement System.

Unless this chapter expressly provides to the contrary the retirement allowance received by a member pursuant to this section shall be calculated based upon the laws pertaining to the retirement system of such district or county as of the date of retirement and not the laws pertaining to such system as of the date the member first left county or district service.

This section shall not be applicable to any member entering service after December 31, 1979.

This section shall apply only in a county of the first class, as established by Sections 28020 and 28022 but shall not be operative in a county until adopted by resolution of the board of supervisors.

SEC. 9. Section 31832 of the Government Code is amended to read:

31832. The board shall, on request of the Board of Administration of the Public Employees' Retirement System, the board of retirement of a retirement system established in another county under this chapter, the Board of Retirement of the State Teachers' Retirement System, or the board of retirement of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, supply information and data necessary for the administration of such other system as it is affected by membership in and service credited under this system.

SEC. 10. Section 31833 of the Government Code is amended to read:

31833. For the purpose of this article and Articles 6 and 6.8 of this chapter, age at time of entrance into the retirement system for a person who enters within 90 days, or six months if Section 31840.4 applies, of last rendering service as a member of the Public Employees' Retirement System, another retirement system established under this chapter, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and who retains his membership in such other system or systems, shall be his age at entry into the first such other system.

SEC. 11. Section 31833.1 is added to the Government Code, to read:

31833.1. For the purpose of this article and Article 6 (commencing with Section 31620) and Article 6.8 (commencing with Section 31639) of this chapter, a member's age at the time of entrance into the retirement system for a person who, after entering, redeposits the contributions he or she withdrew from the Public Employees' Retirement System, and

who otherwise meets all requirements for reciprocity under this article by reason of his or her membership in the Public Employees' Retirement System, shall be his or her age at entry into the Public Employees' Retirement System, commencing with the pay period immediately following receipt of confirmation from the Public Employees' Retirement System that all withdrawn contributions have been redeposited.

SEC. 12. Section 31834 of the Government Code is amended to read:

31834. Notwithstanding Section 31558 and regardless of age at entry into the system in counties subject to the provisions of Section 31676.1 and in counties electing pursuant to Section 31695.1, a person shall become a safety member on the first day of the calendar month following his entrance into service in a position the principal duties of which are defined in Sections 31470.2, 31470.4 or 31470.6, if such first day of the calendar month is within 90 days, or six months if Section 31840.4 applies of last rendering active police or fire suppression or lifeguard work as a member of the Public Employees' Retirement System or a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and the person retains his membership in such other system.

SEC. 13. Section 31835 of the Government Code is amended to read:

31835. The average compensation during any period of service as a member of the Public Employees' Retirement System, a member of a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be considered compensation earnable by a member for purposes of computing final compensation for such member provided:

(1) The period intervening between active memberships in the respective systems does not exceed 90 days, or 6 months if Section 31840.4 applies. Such period shall not include any time during which the member was prohibited by law from becoming a member of the system of another county.

Notwithstanding anything in this chapter to the contrary, the 90-day or 6 month restriction referred to in this section or any other provision of this chapter effecting deferred retirement shall not be applicable to any

members who left county or district service prior to October 1, 1949, and subsequently redeposited.

(2) He retires concurrently under both systems and is credited with such period of service under such other system at the time of retirement.

The provisions of this section shall be applicable to all members and beneficiaries of the system.

SEC. 14. Section 31835.02 of the Government Code is amended to read:

31835.02. Notwithstanding any other provision of this part, Section 31835 shall also apply to any member who was a member of a retirement system established under this chapter and who subsequently becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, providing the period intervening between the periods for which active service was credited does not exceed 90 days, or six months if Section 31840.2 applies, and the member retires concurrently under both systems and is credited with the periods of service at the time of retirement.

This section hall only be operative in any county of the fourth class as described in Sections 28020 and 28025 if it is adopted by a majority vote of the board of supervisors.

SEC. 15. Section 31835.1 of the Government Code is amended to read:

31835.1. Notwithstanding the provisions of Sections 31835 and 31836, a member of a retirement system established under this chapter who is eligible to retire at age 50 pursuant to Section 31672, or who is required to retire because of age while a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, but who cannot retire concurrently from the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be entitled to have his final compensation and service determined under Sections 31835 and 31836 as if he had retired concurrently under such other system.

SEC. 16. Section 31836 of the Government Code is amended to read:

31836. "Service," solely for purposes of qualification for payment of benefits and retirement allowances, shall also include service as an employee of the state or a contracting agency under the Public Employees' Retirement System or of another county having a retirement system established under this chapter, or as a member of the State Teachers' Retirement System, or as a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, if the compensation for such service constitutes compensation earnable by a member under Section 31835 of this part.

No credit shall be granted in this retirement system for service for which the member has received credit in another retirement system or for which he is presently receiving a retirement allowance from another retirement system.

SEC. 17. Section 31837.1 of the Government Code is amended to read:

31837.1. Notwithstanding Sections 31837 and 31838, any member covered under Section 31751 who elects, pursuant to Sections 31700 and 31832, to leave accumulated contributions on deposit may be retired for disability and receive a disability retirement allowance under this section during any period hereafter in which the member receives a disability retirement allowance under the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, subject to all of the following conditions:

(a) That such allowance shall not be paid if the period intervening between the last service credited under this system and becoming a member in such other system exceeds six months.

(b) That, if the member is retiring for non-service-connected disability, the disability requirements shall be that of the other system and the member's retirement allowance shall be based on the other system's disability benefit formula. The disability benefit received in the county shall be calculated as if all the member's service was in the other system but then prorated using the ratio of service in this county to the total service in both systems.

(c) That, if the member is retiring for disability arising out of and in the course of employment subject to such other system, the allowance to the member shall be an annuity which is the actuarial equivalent of the member's accumulated contributions at the time of retirement.

SEC. 18. Section 31840.2 of the Government Code is amended to read:

31840.2. The provisions of this article extending rights to a member of a county retirement system established under this chapter or subjecting him or her to any limitation by reason of his or her membership in the Public Employees' Retirement System shall apply in like manner and under like conditions to a member by reason of his or her membership in any retirement system established under Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 with respect to which an ordinance complying with Section 45310.5 has been filed with and accepted by the board or by reason of his or her membership in a retirement system established by or pursuant to the charter of a city or city and county or by any other public agency of this state which system, in the opinion of the board, provides a similar modification of rights and benefits because of membership in a system established under this chapter and with respect to which the governing body of such city, city and county or public agency and the board have entered into agreement pursuant to Section 20351. This section shall apply only to a member whose termination and subsequent reentry into employment resulting in a change in membership from a system established under this chapter to such other system or from such other system to a system established under this chapter occurred after such acceptance or determination by the board; provided, however, that provisions relating to computation of final compensation shall apply to any other member if such provision would have applied had the termination and entry into employment occurred after such acceptance or determination by the board.

As used in this section, ''board'' means the Board of Administration of the Public Employees' Retirement System.

CHAPTER 967

An act to amend Sections 12132 and 12276.1 of the Penal Code, relating to weapons.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. It is the intent of the Legislature in enacting this bill to simplify the application of its provisions by the Department of Justice and to ensure that these provisions only have the effect of allowing

access to, and use of, pistols for Olympic-style shooting, without affecting other pistols regulated under existing law.

SEC. 2. Section 12132 of the Penal Code is amended to read:

12132. This chapter shall not apply to any of the following:

(a) The sale, loan, or transfer of any firearm pursuant to Section 12082 or 12084 in order to comply with subdivision (d) of Section 12072.

(b) The sale, loan, or transfer of any firearm that is exempt from the provisions of subdivision (d) of Section 12072 pursuant to any applicable exemption contained in Section 12078, if the sale, loan, or transfer complies with the requirements of that applicable exemption to subdivision (d) of Section 12072.

(c) The sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 12125.

(d) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Section 12071 for the purposes of the service or repair of that firearm.

(e) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Section 12071 to its owner where that firearm was initially delivered in the circumstance set forth in subdivision (d).

(f) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Section 12071 to its owner where that firearm was initially delivered to that licensee for the purpose of a consignment sale or as collateral for a pawnbroker loan.

(g) The sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 178.11 of the Code of Federal Regulations.

(h) (1) The Legislature finds a significant public purpose in exempting pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that are used for Olympic target shooting purposes at the time that the act adding this subdivision is enacted, and that fall within the definition of "unsafe handgun'' pursuant to paragraph (3) of subdivision (b) of Section 12126 shall be exempt, as provided in paragraph (2).

(2) This chapter shall not apply to any of the following pistols, because they are consistent with the significant public purpose expressed in paragraph (1):

MANUFACTURER	MODEL	CALIBER
ANSCHUTZ	FP	.22LR

BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR
BENELLI	MP95	.32 S&W LONG
DRULOV	FP	.22LR
GREEN	ELECTROARM	.22LR
HAMMERLI	100	.22LR
HAMMERLI	101	.22LR
HAMMERLI	102	.22LR
HAMMERLI	162	.22LR
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	FP10	.22LR
HAMMERLI	MP33	.22LR
HAMMERLI	SP20	.22LR
HAMMERLI	SP20	.32 S&W LONG
MORINI	CM102E	.22LR
MORINI	22M	.22LR
MORINI	32M	.32 S&W LONG
MORINI	CM80	.22LR
PARDINI	GP	.22 SHORT
PARDINI	GPO	.22 SHORT
PARDINI	GP–SCHUMANN	.22 SHORT
PARDINI	HP	.32 S&W LONG
PARDINI	K22	.22LR
PARDINI	MP	.32 S&W LONG
PARDINI	PGP75	.22LR
PARDINI	SP	.22LR
PARDINI	SPE	.22LR
SAKO	FINMASTER	.22LR
STEYR	FP	.22LR
VOSTOK	IZH NO. 1	.22LR
VOSTOK	MU55	.22LR
VOSTOK	TOZ35	.22LR
WALTHER	FP	.22LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP–2000	.22 SHORT

SEC. 3. Section 12276.1 of the Penal Code is amended to read:

12276.1. (a) Notwithstanding Section 12276, ''assault weapon'' shall also mean any of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

(b) The Legislature finds a significant public purpose in exempting pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that are used for Olympic target shooting purposes at the time the act adding this subdivision is enacted, and that would otherwise fall within the definition of ''assault weapon'' pursuant to this section are exempt, as provided in subdivision (c).

(c) ''Assault weapon'' does not include either of the following:

(1) Any antique firearm.

(2) Any of the following pistols, because they are consistent with the significant public purpose expressed in subdivision (b):

MANUFACTURER	MODEL	CALIBER
BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR
BENELLI	MP95	.32 S&W LONG
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	SP20	.22LR
HAMMERLI	SP20	.32 S&W LONG
PARDINI	GPO	.22 SHORT
PARDINI	GP–SCHUMANN	.22 SHORT
PARDINI	HP	.32 S&W LONG
PARDINI	MP	.32 S&W LONG
PARDINI	SP	.22 LR
PARDINI	SPE	.22 LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP–2000	.22 SHORT

(d) The following definitions shall apply under this section:

(1) ''Magazine'' shall mean any ammunition feeding device.

(2) ''Capacity to accept more than 10 rounds'' shall mean capable of accommodating more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(3) ''Antique firearm'' means any firearm manufactured prior to January 1, 1899.

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

SEC. 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity may not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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CHAPTER 968

An act to amend Sections 50003, 50204, 50302, 50314, and 50401 of the Financial Code, relating to residential mortgage lending.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 50003 of the Financial Code is amended to read:

50003. (a) ''Annual audit'' means a certified audit of the licensee's books, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards.

(b) ''Borrower'' means the loan applicant.

(c) ''Buy'' includes exchange, offer to buy, or solicitation to buy.

(d) ''Commissioner'' means the Commissioner of Corporations.

(e) ''Control'' means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a licensee under this division, whether through voting or through the ownership of voting power of an entity that possesses voting power of the licensee, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds 10 percent or more of the voting power of a licensee or of an entity that owns, controls, or holds, with power to vote, 10 percent or more of the voting power of a licensee. No person shall be deemed to control a licensee solely by reason of his or her status as an officer or director of the licensee.

(f) ''Engage in the business'' means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. ''Engage in the business'' also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

(g) ''Exempt person'' means any of the following:

(1) Any bank, trust company, insurance company, or industrial loan company doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.

(3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(4) A person engaged solely in business, commercial, or agricultural mortgage lending.

(5) A wholly owned service corporation of a savings and loan association or savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank that is authorized to transact business in this state.

(6) Any person making residential mortgage loans with his, her, or its own funds for his, her, or its own investment without intent to resell more than eight residential loans in any one calendar year.

(7) An agency, or other instrumentality of the federal government, or state or municipal government.

(8) An employee or employer pension plan making residential mortgage loans only to its participants, or a person making those loans only to its employees or the employees of a holding company, owner who controls that person, affiliate, or subsidiary of that person.

(9) A person acting in a fiduciary capacity conferred by the authority of a court.

(10) A real estate broker licensed under California law, when making, arranging, selling, or servicing a residential loan.

(11) A California finance lender licensed under Division 9 (commencing with Section 22000), when acting under the authority of that license.

(12) A trustee under a deed of trust pursuant to the Civil Code, when collecting delinquent loan payments, interest, or other loan amounts, or performing other acts in a judicial or nonjudicial foreclosure proceeding.

(h) ''In this state'' means any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state (whether from inside or outside this state and whether the offer was made inside or outside the state).

(i) ''Institutional investor'' means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political

subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurance company, or subsidiary or affiliate of one of the preceding entities, doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000), except pension, profit-sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) A corporation or other entity with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation or entity, provided that the purchaser represents either of the following:

(A) That it is purchasing for its own account for investment and not with a view to, or for sale in connection with, any distribution of a promissory note.

(B) That it is purchasing for resale pursuant to an exemption under Rule 144A (17 C.F.R. 230.144A) of the Securities and Exchange Commission.

(5) An investment company registered under the Investment Company Act of 1940; or a wholly owned and controlled subsidiary of that company, provided that the purchaser makes either of the representations provided in paragraph (4).

(6) A person licensed to make residential mortgage loans under this law or an affiliate or subsidiary of that person.

(7) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer or agent of that person, if that person is acting within the scope of authority granted by that license or an affiliate or subsidiary controlled by that broker or dealer, in connection with a transaction involving the offer, sale, purchase, or exchange of one or more promissory notes secured directly or indirectly by liens on real property or a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, and the offer and sale of those securities is qualified under the California Corporate

Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(8) A licensed real estate broker selling the loan to an institutional investor specified in paragraphs (1) to (7), inclusive, or paragraph (9) or (10).

(9) A business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 or a Small Business Investment Company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

(10) A syndication or other combination of any of the foregoing entities that is organized to purchase a promissory note.

(11) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of securities representing undivided interests in, or rights to receive payments from or to receive payments primarily from, a pool of financial assets held by the trust or business entity, provided that all of the following apply:

(A) The business entity is not a sole proprietorship.

(B) The pool of assets consists of one or more of the following:

(i) Interest-bearing obligations.

(ii) Other contractual obligations representing the right to receive payments from the assets.

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancement for the assets.

(C) The securities will be either one of the following:

(i) Rated as ''investment grade'' by Standard and Poor's Corporation or Moody's Investors Service, Inc. ''Investment grade'' means that the securities will be rated by Standard and Poor's Corporation as AAA, AA, A, or BBB or by Moody's Investors Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings with ''+'' or ''—'' designation or other variations that occur within those ratings.

(ii) Sold to an institutional investor.

(D) The offer and sale of the securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(j) ''Institutional lender'' means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(4) A person licensed to make residential mortgage loans under this law.

(k) ''Law'' means the California Residential Mortgage Lending Act.

(*l*) ''Lender'' means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions.

(m) ''Licensee'' means, depending on the context, a person licensed under either Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130).

(n) ''Makes or making residential mortgage loans'' or ''mortgage lending'' means processing, underwriting, or as a lender using or advancing one's own funds, or making a commitment to advance one's own funds, to a loan applicant for a residential mortgage loan.

(o) ''Mortgage loan,'' ''residential mortgage loan,'' or ''home mortgage loan'' means a federally regulated mortgage loan as defined in Section 3500.2 of Title 24 of the Code of Federal Regulations, or a loan made to finance construction of a one to four family dwelling.

(p) ''Mortgage servicer'' or ''residential mortgage loan servicer'' means a person that (1) is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans.

(q) ''Net worth'' has the meaning set forth in Section 50201.

(r) ''Own funds'' means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on a lender's financial statements, whether secured or unsecured, or (2) a lender's affiliate's cash, corporate capital, or warehouse credit lines at commercial banks or other sources that are liability items on the

affiliate's financial statements, whether secured or unsecured. ''Own funds'' does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of that loan.

(s) ''Person'' means a natural person, a sole proprietorship, a corporation, a partnership, a limited liability company, an association, a trust, a joint venture, an unincorporated organization, a joint stock company, a government or a political subdivision of a government, and any other entity.

(t) ''Residential real property'' or ''residential real estate'' means real property located in this state that is improved by a one-to-four family dwelling.

(u) ''Service'' or ''servicing'' means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

(v) ''Sell'' includes exchange, offer to sell, or solicitation to sell.

SEC. 2. Section 50204 of the Financial Code is amended to read:

50204. A licensee may not do any of the following:

(a) Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account. An entity may apply to the commissioner for a waiver of the requirements of this subdivision by demonstrating, in a letter application, that it has adopted or will adopt another method of disbursement of loan proceeds that will satisfy the purposes of this subdivision.

(b) Fail to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant.

(c) Accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.

(d) Commit an act in violation of Section 2941 of the Civil Code.

(e) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.

(f) Intentionally delay closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(g) Engage in fraudulent home mortgage underwriting practices.

(h) Make payment of any kind, whether directly or indirectly, to an in-house or fee appraiser of a government or private money lending agency, with which an application for a home mortgage has been filed, for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by the home mortgage.

(i) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.

(j) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which it is a party.

(k) Do an act, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.

(*l*) Sell more than eight loans in a calendar year made under the authority of this license to a person who is not an institutional investor.

(m) Commit an act in violation of Section 1695.13 of the Civil Code.

(n) Make or service a loan that is not a residential mortgage loan under the authority of the license.

(o) Require a borrower to pay interest on the mortgage loan for a period in excess of one day prior to recording of the mortgage or deed of trust. Notwithstanding the foregoing, if the borrower affirmatively requests, and the lender agrees, that the recording will occur on Monday, or a day immediately following a bank holiday, interest may commence to accrue on the business day immediately preceding the day of recording, provided the following is disclosed to the borrower in writing: (1) the amount of additional per diem interest charged to accommodate recording on Monday or the day following a holiday, as the case may be, and (2) that it may be possible to avoid the additional per diem interest charge by recording the loan or deed of trust on a day immediately following a business day. This disclosure shall be provided to the borrower when the parties establish the recording date, and the borrower shall acknowledge the additional interest charge by signing the disclosure instrument.

SEC. 3. Section 50302 of the Financial Code is amended to read:

50302. (a) As often as the commissioner deems necessary and appropriate, but at least once every 48 months, the commissioner shall examine the affairs of each licensee for compliance with this division. The commissioner shall appoint suitable persons to perform the examination. The commissioner and his or her appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's operations. The commissioner may cooperate with any agency of the state or federal government, other states, agencies, the federal national mortgage association, or the federal home loan mortgage corporation. The commissioner may accept an examination conducted by one of these entities in place of an examination by the commissioner under this law, unless the commissioner determines that the examination does not provide information necessary to enable the commissioner to fulfill his or her responsibilities under this division.

(b) The commissioner shall provide a written statement of the findings of the examination, issue a copy of that statement to each licensee's principals, officers, or directors, and take appropriate steps to ensure correction of any violations of this division.

(c) Affiliates of a licensee are subject to examination by the commissioner on the same terms as the licensee, but only when reports from, or examination of, a licensee provides documented evidence of unlawful activity between a licensee and affiliate benefiting, affecting, or arising from the activities regulated by this division.

(d) The licensee shall pay, and the commissioner shall assess, the reasonable expenses of any examination of the licensee and affiliates, consistent with the requirements of subdivision (c) of Section 50314.

(e) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

SEC. 4. Section 50314 of the Financial Code is amended to read:

50314. (a) Every person subject to this division shall keep documents and records that will properly enable the commissioner to determine whether the residential mortgage lending or residential mortgage loan servicing functions performed by that person comply with the provisions of this division and with all rules and orders made by the commissioner under this division. Upon request of the commissioner, residential mortgage lenders and residential mortgage loan servicers shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code.

(b) The business documents and records of every residential mortgage lender or residential mortgage loan servicer, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice. The provisions of this subdivision shall not apply to persons specified in subdivision (g) of Section 50003.

Any person subject to this division shall, upon request and within the time specified in the request, allow inspection and copying of any documents and records by the commissioner or his or her authorized representative.

(c) The cost of every inspection and examination of a licensee or other person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of these costs in any court of competent

jurisdiction. In determining the cost of any inspection or examination, the commissioner may use the estimated average hourly cost, including overhead, for all persons performing inspections or examinations of licensees or other persons subject to this division for the fiscal year.

For the purpose of this subdivision only, no person other than a licensee shall be deemed to be a person subject to this division unless and until the person is determined to be a person subject to this division by an administrative hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or by a judicial hearing in any court of competent jurisdiction.

(d) Investigation and examination reports prepared by the commissioner's duly designated representatives are not public reports. Those reports may be disclosed to the officers or directors of a licensee that is the subject of the report for the purpose of corrective action by the officers or directors. Such a disclosure shall not operate as a waiver of the exemption specified in subdivision (d) of Section 6254 of the Government Code.

SEC. 5. Section 50401 of the Financial Code is amended to read:

50401. (a) In addition to other fees and reimbursements required to be paid under this division, each licensee shall pay to the commissioner an amount equal to the lesser of: (1) its pro rata share of all costs and expenses (including overhead and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses) that the commissioner reasonably expects to incur in the current fiscal year in the administration of this division and not otherwise recovered by the commissioner under this division or from the State Corporations Fund, plus a deficit or less a surplus actually incurred during the prior fiscal year; or (2) five thousand dollars ($5,000). The pro rata share shall be the greater of either one thousand dollars ($1,000) or the sum of: (A) a number derived from the ratio of the aggregate principal amount of the mortgage loans secured by residential real property originated by the licensee to all mortgage loans secured by residential real property originated by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year; plus (B) a number derived from the ratio of the average value of mortgage loans secured by residential real property serviced by a licensee to the average value of all mortgage loans secured by residential real property serviced by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year. For the purposes of this section, the ''principal amount'' of a mortgage loan means the initial total amount a borrower is obligated to repay the lender

and the ''average value'' of loans serviced means the sum of the aggregate dollar value of all mortgage loans secured by residential real property serviced by a licensee, calculated as of the last day of each month in the calendar year just ended, divided by 12.

In order for the commissioner to calculate the assessment under this section, each licensee shall file an annual report for the calendar year just ended containing the information required by the commissioner on or before March 1 of the year in which the assessment is to be calculated.

In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of this division and all reimbursements provided for under this division.

(b) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead, reasonably incurred in the administration of this division, and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses.

(c) On or before the 30th day of September in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(d) If a licensee fails to pay the assessment on or before the 30th day following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee. An order issued under this section is not stayed by the filing of a request for a hearing. If, after an order is made, the request for hearing is filed in writing within 15 days from the date of service of the order and a hearing is not held within 60 days of the filing, the order is deemed rescinded as of its effective date. During a period when its license is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by further order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

CHAPTER 969

An act to amend Section 77206 of the Government Code, relating to courts.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 30, 2000.]

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

SECTION 1. Section 77206 of the Government Code is amended to read:

77206. (a) The Judicial Council shall adopt appropriate rules for budget submission and management, and reporting of revenues and expenditures by each court. The Controller, in consultation with the Judicial Council, shall maintain appropriate regulations for record keeping and accounting by the courts, in order to determine all moneys collected by the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations.

(b) Regulations, rules, and reporting requirements adopted pursuant to this chapter shall be exempt from review and approval or other processing by the Office of Administrative Law as provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(c) The Controller, at the request of the Legislature or the Judicial Council, may perform and publish financial and fiscal compliance audits of the reports of court revenues and expenditures. The Controller shall report the results of these audits to the Legislature.

(d) The Judicial Council shall provide for the transmission of summary information concerning court revenues and expenditures to the Controller.

(e) The Judicial Council shall adopt rules to provide for reasonable public access to budget allocation and expenditure information at the state and local level.

(f) The Judicial Council shall adopt rules ensuring that, upon written request, the trial courts provide, in a timely manner, information relating to the administration of the courts, including financial information and other information that affects the wages, hours, and working conditions of trial court employees.

CHAPTER 970

An act to amend Section 1777.1 of the Labor Code, relating to public works.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 30, 2000.]

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

SECTION 1. Section 1777.1 of the Labor Code is amended to read:

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in willful violation of this chapter, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation of this chapter to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(c) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(d) Not less than semiannually, the Labor Commissioner shall publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractor's State License Board license number of the contractor, and the effective period of debarment of the contractor. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars ($5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(e) For purposes of this section, ''contractor or subcontractor'' means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(f) For the purposes of this section, the term ''any interest'' means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. ''Any interest'' includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. ''Any interest'' does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(g) For the purposes of this section, the term ''entity'' is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(h) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

CHAPTER 971

An act to amend Section 832.7 of the Penal Code, relating to personnel records.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Peace officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed

by the department or agency that employs the peace officer in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of police officers or a police agency conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency which employs peace officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency which employs peace officers may release factual information concerning a disciplinary investigation if the peace officer who is the subject of the disciplinary investigation, or the peace officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the peace officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace officer or his or her agent or representative.

(e) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace officer's personnel file pursuant to Section 1043 of the Evidence Code.

CHAPTER 972

An act to amend Section 11105.3 of the Penal Code, to amend Section 15660 of, and to add Section 15660.1 to, the Welfare and Institutions Code, relating to crime prevention.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (h) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of an offense specified in paragraph (1) of subdivision (h), and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith conformity with this section is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement

of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, ''employer'' means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, ''human resource agency'' means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(h) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the

Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period or has been incarcerated as a result of any of those convictions within the preceding 10 years.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a) or any felony conviction that is over 10 years old if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period or has been incarcerated for any of those convictions within the preceding 10 years.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(i) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 2. Section 15660 of the Welfare and Institutions Code is amended to read:

15660. (a) The Department of Justice shall secure any criminal record of a person to determine whether the person has been convicted or incarcerated within the last 10 years as the result of committing a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, theft, robbery, burglary, or any felony, if both of the following conditions are met:

(1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice. For purposes of this paragraph, ''employer'' includes, but is not limited to, an in-home supportive services recipient, as defined by Section 12302.2 and any

recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95.

(2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home.

(b) (1) If it is found that the person has been convicted or incarcerated within the last 10 years as the result of committing a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, theft, robbery, burglary, or any felony, the Department of Justice shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact.

(2) Any employer may deny employment to any person who is the subject of a report under paragraph (1) when the report indicates that the person has committed any of the crimes identified in paragraph (1).

(3) Nothing in this section shall be construed to require any employer to hire any person who is the subject of a report under paragraph (1) when the report indicates that the person has not committed any of the crimes indicated in paragraph (1).

(c) (1) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer 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 employer with a statement of that fact as soon as possible, but not later than 30 calender days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, notify the employer that the fingerprints were illegible.

(2) Fingerprints may be taken by any local law enforcement officer or agency for purposes of paragraph (1).

(3) Counties shall notify any recipient of, or applicant for, in-home supportive services or personal care services under the Medi-Cal program, upon his or her application for in-home supportive services or personal care services or during his or her annual redetermination, or upon the recipient's changing providers, that a criminal record check is available, and that the check can be performed by the Department of Justice.

(d) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in accordance with this section to comply with the 30 calendar day requirement for provision to

the department of the criminal record information, as contained in subdivision (c).

SEC. 3. Section 15660.1 is added to the Welfare and Institutions Code, to read:

15660.1. Section 15660 shall also apply to persons who have been incarcerated within the past 10 years as a result of committing any of the offenses listed in that section.

SEC. 4. Section 3 of this bill, adding Section 15660.1 to the Welfare and Institutions Code, shall become operative only if both this bill and Assembly Bill 2137 are enacted and become effective on or before January 1, 2001, and each bill proposes to amend Section 15660 of the Welfare and Institutions Code, in which case Section 2 of this bill, amending Section 15660 of the Welfare and Institutions Code, shall not become operative.

CHAPTER 973

An act to amend Sections 7235 and 7236 of the Revenue and Taxation Code, and to amend Section 9400 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 7235 of the Revenue and Taxation Code is amended to read:

7235. The Safety Fee imposed by this chapter shall be paid by all motor carriers of property, as defined in Section 34601 of the Vehicle Code.

SEC. 2. Section 7236 of the Revenue and Taxation Code is amended to read:

7236. (a) All funds collected by the Department of Motor Vehicles pursuant to Section 7232 shall be deposited in the State Treasury to the credit of the Motor Carriers Permit Fund, which is hereby created. The following fees shall be paid to the department:

(1) For-hire motor carriers of property shall pay, according to the following schedule, fees indicated as safety fee and uniform business license tax fee, based on the size of their motor vehicle fleet.

(2) Private carriers of property with a fleet size of 10 or less motor vehicles shall pay a fee of thirty-five dollars ($35). Private carriers of property with a fleet size of 11 or more motor vehicles shall pay,

according to the following schedule, fees indicated as safety fee, based on the size of their motor vehicle fleet. Any carrier that does not pay a uniform business license tax fee shall not operate as a for-hire motor carrier.

(3) A seasonal permit may be issued to a motor carrier of property upon payment of fees indicated as safety fee and one-twelfth of the fee indicated as uniform business license tax fee, rounded to the next dollar, for each month the permit is valid. The original seasonal permit shall be valid for a period of not less than six months, and may be renewed upon payment of a five dollar ($5) fee, and one-twelfth of the fee indicated as a uniform business license tax fee for each additional month of operation.

Fleet Size—Commercial Motor Vehicles Fee	Safety Fee	Uniform Business License Tax
1	$60	$60
2–4	$75	$125
5–10	$200	$275
11–20	$240	$470
21–35	$325	$650
36–50	$430	$880
51–100	$535	$1,075
101–200	$635	$1,300
201–500	$730	$1,510
501–1,000	$830	$1,715
1,001–2,000	$930	$1,900
2,001–over	$1,030	$2,000

Notwithstanding the above fee schedule, motor carriers of property with 10 or fewer trucks shall not pay fees higher than they would have paid under the fee structure in place as of January 1, 1996. Notwithstanding Section 34606 of the Vehicle Code, fees for these carriers shall not be subject to increase by the Department of Motor Vehicles.

(b) The Department of Motor Vehicles shall transfer funds deposited in the Motor Carriers Permit Fund as follows:

(1) Funds derived from Uniform Business License Tax Fees shall be transferred to the General Fund.

(2) Funds derived from Safety Fees shall remain in the Motor Carriers Permit Fund and shall be available for appropriation by the Legislature to cover costs incurred by the Department of Motor Vehicles and the Department of the California Highway Patrol in regulating motor

carriers of property pursuant to Division 14.85 (commencing with Section 34600) of the Vehicle Code.

(c) It is the intent of the Legislature that the fee schedule established in subdivision (a) shall not discriminate against small fleet or individual vehicle operators or result in a disproportionate share of those fees being assigned to small fleet or individual vehicle operators.

SEC. 3. Section 9400 of the Vehicle Code is amended to read:

9400. In addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of commercial vehicles. 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 for registration 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 for registration 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
10,001 lbs. to and including 11,000 lbs.	409
11,001 lbs. to and including 12,000 lbs.	462
12,001 lbs. to and including 13,000 lbs.	513
13,001 lbs. to and including 14,000 lbs.	563
14,001 lbs. and over	616

(c) For any motor vehicle having three or more axles, or for any trailer, semitrailer, pole or pipe dolly, logging dolly, or other dolly 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
10,001 lbs. to and including 11,000 lbs.	616
11,001 lbs. to and including 12,000 lbs.	693
12,001 lbs. to and including 13,000 lbs.	770
13,001 lbs. to and including 14,000 lbs.	847
14,001 lbs. to and including 15,000 lbs.	924
15,001 lbs. and over	1,016

(d) This section shall not be 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 this section.

(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, 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.

(g) This section shall become operative on July 1, 1994.

SEC. 3.5. 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 a declared gross 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 this section.

(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. 4. Section 3.5 of this bill incorporates amendments to Section 9400 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 9400 of the Vehicle Code, and (3) this bill is enacted after SB 2084, in which case Section 9400 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.

CHAPTER 974

An act to add Sections 13961.05 and 13965.5 to the Government Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 13961.05 is added to the Government Code, to read:

13961.05. (a) In addition to the extension for good cause for the filing of an application authorized under Section 13961, the board may also for good cause grant an additional extension when the claim is filed under either of the following circumstances:

(1) The application is filed by a person who is called to testify in a proceeding against a defendant as a victim or derivative victim of prior acts of the defendant pursuant to Section 1108 or 1109 of the Evidence Code and the application is filed within one year of the completion of the person's testimony, is accompanied by a recommendation from the prosecuting attorney that the application be accepted, and includes a copy of the crime report or other official documentation describing the offense of which the person was the victim or derivative victim.

(2) The application is filed by a victim of a sexually violent offense who is called to testify in a proceeding involving that offender pursuant to Section 6603 of the Welfare and Institutions Code, and the application is filed within one year of the completion of the victim's testimony and is accompanied by a copy of the crime report or other official documentation describing the offense.

(b) No application shall be denied under paragraph (1) or (2) of subdivision (a) solely because the crime was not reported to law enforcement within a specified time period.

SEC. 2. Section 13965.5 is added to the Government Code, to read:

13965.5. No reimbursement shall be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim.

CHAPTER 975

An act relating to the Political Reform Act of 1974, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 30, 2000.]

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

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

(a) As candidates, campaign committees, organizations, groups, business entities, and individuals explore and develop new uses of the Internet for political purposes in California, political activity on the Internet will increase exponentially.

(b) As a medium for political activity, the Internet is unique because it transcends political and geographic boundaries worldwide. It permits any candidates and committees to engage in fundraising and campaigning, and permits individuals, groups, and others to engage in political speech and other political activity that could constitute the type of activity subject to regulation under the Political Reform Act of 1974 (the Act).

(c) The Act predates the development of the Internet by nearly two decades. The Act is intended to inform the electorate and to prevent the corruption of the political process by public disclosure of contributions and expenditures to candidates and public officials. However, the Act is silent on its application to political activity on the Internet.

(d) Recent efforts by the Federal Elections Commission (FEC) to apply the Federal Election Campaign Act of 1971, as amended, to political activity on the Internet caused strong criticism to the commission's interpretive rulings. The FEC has now embarked on a formal inquiry in order to assess the federal act and regulations to political activity on the Internet. The FEC is currently reviewing the more than 1,200 comments received to determine the content of future regulatory changes.

(e) Because political activity on the Internet presents novel and difficult issues, and because questions exist as to the extent that the Internet as a medium should be, or can be, subject to state regulation, there exists a need for a study to address the issues presented by political activity on the Internet and on the desirability of state regulation in light of the goals and purposes of the Act.

SEC. 2. (a) The Bipartisan California Commission on Internet Political Practices is hereby established. The commission shall consist of thirteen members appointed as follows:

(1) Three members appointed by the Governor, one of whom shall be a member of the Democratic Party, and one of whom shall be a member of the Republican Party.

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

(3) One member appointed by the Minority Floor Leader of the Senate.

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

(5) One member appointed by the Minority Floor Leader of the Assembly.

(6) Two members appointed by the Secretary of State, one of whom shall be a member of the Democratic Party, and one of whom shall be a member of the Republican Party.

(7) Two members appointed by the Chairperson of the Fair Political Practices Commission, one of whom shall be a member of the Democratic Party, and one of whom shall be a member of the Republican Party.

(b) Each appointing authority shall seek to appoint individuals with diversified backgrounds and expertise to ensure that the membership of the California Commission on Internet Political Practices is familiar with, among other matters, all of the following:

(1) The magnitude of change posed by Internet technology.

(2) Political campaign practices and trends.

(3) Legal developments concerning political speech, the Internet, and the Act.

(4) The concerns of public interest groups.

(c) The Bipartisan California Commission on Internet Political Practices shall meet and select a chairperson from among its members not later than 45 days after the effective date of this act. The chairman may hire a director, a secretary, and a legal adviser to assist with the work of the commission.

(d) The Bipartisan California Commission on Internet Political Practices shall examine the various issues posed by campaign activity on the Internet in relation to the goals and purposes of the Act, and make recommendations for appropriate legislative action, if any. The examination of issues should include, but are not limited to, the following:

(1) Whether political communications on the Internet, especially those that expressly advocate support for or opposition to clearly identified candidates for elective office or ballot measures should be subject to the campaign finance disclosure requirements of the Act.

(2) Whether costs associated with the development of campaign websites should be disclosed to the public, and whether they should be treated, depending on the circumstances, as reportable contributions, expenditures, independent expenditures, or payments.

(3) Whether websites created by individuals, sometimes referred to as ''fan sites,'' that contain references to candidates and measures, or urge support or opposition to candidates or measures, or that provide hyperlinks to official campaign sites, should be treated differently from

sites created by political parties, candidate and ballot measure committees, or independent committees.

(4) Whether the identity of publishers of websites that feature political campaign activity should be required to be disclosed similar to current identification requirements for persons who pay for printed or broadcast advertising.

(5) Whether current laws are adequate to protect against fraud, libel, or slander in the context of Internet political activity.

(6) Whether any disclosure requirements should be imposed on Internet political activity in order to encourage the broadest possible citizen participation in the electoral process.

(7) Whether the Act is an appropriate regulatory vehicle for campaign activity at the state level, or whether a different regulatory structure for Internet campaign activity should be developed, if any.

(e) The meetings of the Bipartisan California Commission on Internet Political Practices shall be open and public. The Commission members shall receive one hundred dollars ($100) per diem for each day of attendance at a meeting of the commission, not to exceed 10 meetings.

(f) The Bipartisan California Commission on Internet Political Practices shall report its findings and recommendations to the Legislature not later than December 1, 2001. The commission shall cease to exist on January 1, 2002.

SEC. 3. The sum of two hundred twenty thousand dollars ($220,000) is hereby appropriated from the General Fund to the Controller for allocation to the Bipartisan California Commission on Internet Political Practices to defray the costs of the committee in conducting the study and preparing the report required by this act.

CHAPTER 976

An act to amend Sections 6716, 6775, 8710, and 8780 of, and to add Sections 6749 and 8759 to, the Business and Professions Code, relating to professional engineers and land surveyors.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 6716 of the Business and Professions Code is amended to read:

6716. (a) The board may adopt rules and regulations consistent with law and necessary to govern its action. These rules and regulations

shall be adopted in accordance with the provisions of the Administrative Procedure Act.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter shall be governed by these rules and regulations.

(c) The board shall hold at least two regular meetings each year. Special meetings shall be held at such times as the board rules provide. A majority of the board constitutes a quorum. Except as otherwise provided by law, the vote required for any action of the board is a majority of the members present, but not less than five.

SEC. 2. Section 6749 is added to the Business and Professions Code, to read:

6749. (a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) A description of the services to be provided to the client by the professional engineer.

(2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.

(4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the contract.

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

(1) Professional engineering services rendered by a professional engineer for which the client will not pay compensation.

(2) A professional engineer who has a current or prior contractual relationship with the client to provide engineering services, and that client has paid the professional engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

(4) Professional engineering services rendered by a professional engineer to any of the following:

(A) A professional engineer licensed or registered under this chapter.

(B) A land surveyor licensed under Chapter 15 (commencing with Section 8700).

(C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section 7800).

(F) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates.

(G) A public agency.

(c) ''Written contract'' as used in this section includes a contract that is in electronic form.

SEC. 3. Section 6775 of the Business and Professions Code is amended to read:

6775. The board may receive and investigate complaints against registered professional engineers, and make findings thereon.

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

(a) Who has been convicted of a crime substantially related to the qualifications, functions and duties of a registered professional engineer, in which case the certified record of conviction shall be conclusive evidence thereof.

(b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in his or her practice.

(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

(d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.

(e) Who has been found guilty of any fraud or deceit in obtaining his or her certificate.

(f) Who aids or abets any person in the violation of any provision of this chapter.

(g) Who in the course of the practice of professional engineering has been found guilty by the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

(h) Who violates any provision of this chapter.

SEC. 4. Section 8710 of the Business and Professions Code is amended to read:

8710. (a) The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter, or a license or certificate issued to a civil engineer pursuant to Chapter 7 (commencing with Section 6700), shall be governed by these rules and regulations.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 5. Section 8759 is added to the Business and Professions Code, to read:

8759. (a) A licensed land surveyor or registered civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or registered civil engineer and the client, or his or her representative, prior to the licensed land surveyor or registered civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) A description of the services to be provided to the client by the licensed land surveyor or registered civil engineer.

(2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the licensed land surveyor or registered civil engineer, and the name and address of the client.

(4) A description of the procedure that the licensed land surveyor or registered civil engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the contract.

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

(1) Professional land surveying services rendered by a licensed land surveyor or registered civil engineer for which the client will not pay compensation.

(2) A licensed land surveyor or registered civil engineer who has a current or prior contractual relationship with the client to provide professional services pursuant to this chapter, and that client has paid the surveyor or engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

(4) Professional services rendered by a licensed land surveyor or a registered civil engineer to any of the following:

(A) A professional engineer licensed or registered under Chapter 7 (commencing with Section 6700).

(B) A land surveyor licensed under this chapter.

(C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section 7800).

(F) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates.

(G) A public agency.

(c) ''Written contract'' as used in this section includes a contract that is in electronic form.

SEC. 6. Section 8780 of the Business and Professions Code is amended to read:

8780. The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

(b) Any negligence or incompetence in his or her practice of land surveying.

(c) Any fraud or deceit in obtaining his or her license.

(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

(e) Any conviction of a crime substantially related to the qualifications, functions, and duties of a land surveyor. The record of the conviction shall be conclusive evidence thereof.

(f) Aiding or abetting any person in the violation of any provision of this chapter.

(g) A breach or violation of a contract to provide land surveying services.

(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 977

An act to amend Section 1748.10 of, and to amend, repeal, and add Section 1748.12 of, the Civil Code, relating to credit card issuers.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 1748.10 of the Civil Code is amended to read:

1748.10. This act shall be known and may be cited as the ''Areias Credit Card Full Disclosure Act Of 1986.''

SEC. 2. Section 1748.12 of the Civil Code is amended to read:

1748.12. (a) For purposes of this section:

(1) ''Cardholder'' means any consumer to whom a credit card is issued, provided that in cases when more than one credit card has been issued for the same account, all persons holding those credit cards may be treated as a single cardholder.

(2) ''Credit card'' means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit. ''Credit card'' does not mean any of the following:

(A) Any single credit device used to obtain telephone property, labor, or services in any transaction under public utility tariffs.

(B) Any device that may be used to obtain credit pursuant to an electronic fund transfer but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account.

(C) Any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products, as defined in subdivision (c) of Section 13401 of the Business and Professions Code, which will be used primarily for business rather than personal or family purposes.

(3) ''Marketing information'' means the categorization of cardholders compiled by a credit card issuer, based on a cardholder's shopping patterns, spending history, or behavioral characteristics derived from account activity which is provided to a marketer of goods for consideration. ''Marketing information'' does not include aggregate data which does not identify a cardholder based on the cardholder's shopping patterns, spending history, or behavioral characteristics derived from account activity or any communications to any person in connection with any transfer, processing, billing, collection, chargeback, fraud prevention, credit card recovery, or acquisition of or for credit card accounts.

(b) If the credit card issuer discloses marketing information concerning a cardholder to any person, the credit card issuer shall provide a written notice to the cardholder that clearly and conspicuously describes the cardholder's right to prohibit the disclosure to marketers of goods of marketing information concerning the cardholder which discloses the cardholder's identity. The notice shall include a preprinted form by which the cardholder may exercise this right and shall advise the cardholder of a toll-free telephone number which the cardholder may call to exercise this right.

(c) The requirements of subdivision (b) may be satisfied by furnishing the notice to the cardholder (1) on or with the credit application, (2) with the credit card when it is delivered to the cardholder, or (3) in any manner and at any time, provided that it is furnished prior to the disclosure of marketing information relating to the cardholder. No notice need be furnished to a cardholder to whom prior notice has been given, as to whom no marketing information will be disclosed, or to whom notice has been given prior to the effective date of this act which complies with the provisions of subdivision (b).

(d) An election to prohibit disclosure of marketing information, as provided in subdivision (b), shall terminate upon receipt by the credit card issuer of notice from the cardholder that the cardholder's election under subdivision (b) is no longer effective.

(e) The requirements of subdivisions (b) and (c) do not apply to any of the following communications of marketing information by a credit card issuer:

(1) Communications to any party to, or merchant specified in, the credit card agreement, or to any person whose name appears on the credit card or on whose behalf the credit card is issued.

(2) Communications to consumer credit reporting agencies, as defined in subdivision (d) of Section 1785.3.

(3) Communications to a corporate subsidiary or affiliate of the card issuer.

(4) Communications to a third party when the third party is responsible for conveying information from the card issuer to any of its cardholders.

(f) If the laws of the United States require disclosure to cardholders regarding the use of personal information, compliance with the federal requirements shall be deemed to be compliance with this section.

(g) This section shall become operative on July 1, 1994.

(h) This section shall become inoperative on April 1, 2002, and as of January 1, 2003, is repealed unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. Section 1748.12 is added to the Civil Code, to read:

1748.12. (a) For purposes of this section:

(1) ''Cardholder'' means any consumer to whom a credit card is issued, provided that, when more than one credit card has been issued for the same account, all persons holding those credit cards may be treated as a single cardholder.

(2) ''Credit card'' means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit. ''Credit card'' does not mean any of the following:

(A) Any single credit device used to obtain telephone property, labor, or services in any transaction under public utility tariffs.

(B) Any device that may be used to obtain credit pursuant to an electronic fund transfer but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account.

(C) Any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products, as defined in subdivision (c) of Section 13401 of the Business and Professions Code, which will be used primarily for business rather than personal or family purposes.

(3) ''Marketing information'' means the categorization of cardholders compiled by a credit card issuer, based on a cardholder's shopping patterns, spending history, or behavioral characteristics

derived from account activity which is provided to a marketer of goods or services or a subsidiary or affiliate organization of the company that collects the information for consideration. ''Marketing information'' does not include aggregate data that does not identify a cardholder based on the cardholder's shopping patterns, spending history, or behavioral characteristics derived from account activity or any communications to any person in connection with any transfer, processing, billing, collection, chargeback, fraud prevention, credit card recovery, or acquisition of or for credit card accounts.

(b) If the credit card issuer discloses marketing information concerning a cardholder to any person, the credit card issuer shall provide a written notice to the cardholder that clearly and conspicuously describes the cardholder's right to prohibit the disclosure of marketing information concerning the cardholder which discloses the cardholder's identity. The notice shall be in 10-point type and shall advise the cardholder of his or her ability to respond either by completing a preprinted form or a toll-free telephone number that the cardholder may call to exercise this right.

(c) The requirements of subdivision (b) shall be satisfied by furnishing the notice to the cardholder:

(1) At least 60 days prior to the initial disclosure of marketing information concerning the cardholder by the credit card issuer.

(2) For all new credit cards issued on or after April 1, 2002, on the form containing the new credit card when the credit card is delivered to the cardholder.

(3) At least once per calendar year, to every cardholder entitled to receive an annual statement of billings rights pursuant to 12 C.F.R. 226.9 (Regulation Z). The notice required by this paragraph may be included on or with any periodic statement or with the delivery of the renewal card.

(d) (1) The cardholder's election to prohibit disclosure of marketing information shall be effective only with respect to marketing information that is disclosed to any party beginning 30 days after the credit card issuer has received, at the designated address on the form containing the new credit card or on the preprinted form, or by telephone, the cardholder's election to prohibit disclosure. This does not apply to the disclosure of marketing information prior to the cardholder's notification to the credit card issuer of the cardholder's election.

(2) An election to prohibit disclosure of marketing information shall terminate upon receipt by the credit card issuer of notice from the cardholder that the cardholder's election to prohibit disclosure is no longer effective.

(e) The requirements of this section do not apply to any of the following communications of marketing information by a credit card issuer:

(1) Communications to any party to, or merchant specified in, the credit card agreement, or to any person whose name appears on the credit card or on whose behalf the credit card is issued.

(2) Communications to consumer credit reporting agencies, as defined in subdivision (d) of Section 1785.3.

(3) To the extent that the Fair Credit Reporting Act preempts the requirements of this section as to communication by a credit card issuer to a corporate subsidiary or affiliate, the credit card issuer may communicate information about a cardholder to a corporate subsidiary or affiliate to the extent and in the manner permitted under that act.

(4) Communications to a third party when the third party is responsible for conveying information from the card issuer to any of its cardholders.

(f) If the laws of the United States require disclosure to cardholders regarding the use of personal information, compliance with the federal requirements shall be deemed to be compliance with this section.

(g) This section shall become operative on April 1, 2002.

CHAPTER 978

An act to amend Sections 1785.10, 1785.15, and 1785.16 of, and to add Sections 1785.15.1, 1785.15.2, and 1785.20.2 to, the Civil Code, relating to consumer credit.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 1785.10 of the Civil Code is amended to read:

1785.10. (a) Every consumer credit reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request.

(b) Every consumer reporting agency, upon contact by a consumer by telephone, mail, or in person regarding information which may be contained in the agency files regarding that consumer, shall promptly advise the consumer of his or her rights under Sections 1785.19 and 1785.19.5, and of the obligation of the agency to provide disclosure of the files in person, by mail, or by telephone pursuant to Section 1785.15,

including the obligation of the agency to provide a decoded written version of the file or a written copy of the file with an explanation of any code, including any credit score used, and the key factors, as defined in Section 1785.15.1, if the consumer so requests that copy. The disclosure shall be provided in the manner selected by the consumer, chosen from among any reasonable means available to the consumer credit reporting agency.

The agency shall determine the applicability of subdivision (1) of Section 1785.17 and, where applicable, the agency shall inform the consumer of the rights under that section.

(c) All information on a consumer in the files of a consumer credit reporting agency at the time of a request for inspection under subdivision (a), shall be available for inspection, including the names and addresses of the sources of information.

(d) (1) The consumer credit reporting agency shall also disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(A) For employment purposes within the two-year period preceding the request.

(B) For any other purpose within the 12-month period preceding the request.

(2) Disclosure of recipients of consumer credit reports for purposes of this subdivision shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. If requested by the consumer, the identification shall also include the address of the recipient.

(e) The consumer credit reporting agency shall also disclose a record of all inquiries received by the agency in the 12-month period preceding the request that identified the consumer in connection with a credit transaction which is not initiated by the consumer. This record of inquiries shall include the name of each recipient making an inquiry.

SEC. 2. Section 1785.15 of the Civil Code is amended to read:

1785.15. (a) A consumer credit reporting agency shall supply files and information required under Section 1785.10 during normal business hours and on reasonable notice. In addition to the disclosure provided by this chapter and any disclosures received by the consumer, the consumer has the right to request and receive all of the following:

(1) Either a decoded written version of the file or a written copy of the file, including all information in the file at the time of the request, with an explanation of any code used.

(2) A credit score for the consumer, the key factors, and the related information, as defined in and required by Section 1785.15.1.

(3) A record of all inquiries, by recipient, which result in the provision of information concerning the consumer in connection with a

credit transaction that is not initiated by the consumer and which were received by the consumer credit reporting agency in the 12-month period immediately preceding the request for disclosure under this section.

(4) The recipients, including end users specified in Section 1785.22, of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(A) For employment purposes within the two-year period preceding the request.

(B) For any other purpose within the 12-month period preceding the request.

Identification for purposes of this paragraph shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. If requested by the consumer, the identification shall also include the address of the recipient.

(b) Files maintained on a consumer shall be disclosed promptly as follows:

(1) In person, at the location where the consumer credit reporting agency maintains the trained personnel required by subdivision (d), if he or she appears in person and furnishes proper identification.

(2) By mail, if the consumer makes a written request with proper identification for a copy of the file or a decoded written version of that file to be sent to the consumer at a specified address. A disclosure pursuant to this paragraph shall be deposited in the United States mail, postage prepaid, within five business days after the consumer's written request for the disclosure is received by the consumer credit reporting agency. Consumer credit reporting agencies complying with requests for mailings under this section shall not be liable for disclosures to third parties caused by mishandling of mail after the mailings leave the consumer reporting agencies.

(3) A summary of all information contained in files on a consumer and required to be provided by Section 1785.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure.

(4) Information in a consumer's file required to be provided in writing under this section may also be disclosed in another form if authorized by the consumer and if available from the consumer credit reporting agency. For this purpose a consumer may request disclosure in person pursuant to Section 1785.10, by telephone upon disclosure of proper identification by the consumer, by electronic means if available from the consumer credit reporting agency, or by any other reasonable means that is available from the consumer credit reporting agency.

(c) ''Proper identification,'' as used in subdivision (b) means that information generally deemed sufficient to identify a person. Only if the

consumer is unable to reasonably identify himself or herself with the information described above, may a consumer credit reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity.

(d) The consumer credit reporting agency shall provide trained personnel to explain to the consumer any information furnished him or her pursuant to Section 1785.10.

(e) The consumer shall be permitted to be accompanied by one other person of his or her choosing, who shall furnish reasonable identification. A consumer credit reporting agency may require the consumer to furnish a written statement granting permission to the consumer credit reporting agency to discuss the consumer's file in that person's presence.

(f) Any written disclosure by a consumer credit reporting agency to any consumer pursuant to this section shall include a written summary of all rights the consumer has under this title and in the case of a consumer credit reporting agency which compiles and maintains consumer credit reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer credit reporting agency. The written summary of rights required under this subdivision is sufficient if in substantially the following form:

''You have a right to obtain a copy of your credit file from a consumer credit reporting agency. You may be charged a reasonable fee not exceeding eight dollars ($8). There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The consumer credit reporting agency must provide someone to help you interpret the information in your credit file.

You have a right to dispute inaccurate information by contacting the consumer credit reporting agency directly. However, neither you nor any credit repair company or credit service organization has the right to have accurate, current, and verifiable information removed from your credit report. Under the Federal Fair Credit Reporting Act, the consumer credit reporting agency must remove accurate, negative information from your report only if it is over seven years old. Bankruptcy information can be reported for 10 years.

If you have notified a credit reporting agency in writing that you dispute the accuracy of information in your file, the consumer credit reporting agency must then, within 30 business days, reinvestigate and modify or remove inaccurate information. The consumer credit reporting agency may not charge a fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the consumer credit reporting agency.

If reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the consumer credit reporting agency to keep in your file, explaining why you think the record is inaccurate. The consumer credit reporting agency must include your statement about disputed information in a report it issues about you.

You have a right to receive a record of all inquiries relating to a credit transaction initiated in 12 months preceding your request. This record shall include the recipients of any consumer credit report.

You may request in writing that the information contained in your file not be provided to a third party for marketing purposes.

You have a right to bring civil action against anyone, including a consumer credit reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.''

SEC. 3. Section 1785.15.1 is added to the Civil Code, to read:

1785.15.1. (a) Upon the consumer's request for a credit score, a consumer credit reporting agency shall supply to a consumer a notice which shall include the information described in paragraphs (1) to (5), inclusive, and a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender. However, if the consumer requests the credit file and not the credit score, then the consumer shall receive the credit file and a statement that he or she may request and obtain a credit score.

(1) The consumer's current credit score or the consumer's most recent credit score that was previously calculated by the credit reporting agency for a purpose related to the extension of credit.

(2) The range of possible credit scores under the model used.

(3) All the key factors that adversely affected the consumer's credit score in the model used, the total number of which shall not exceed four.

(4) The date the credit score was created.

(5) The name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(b) For purposes of this act, ''credit score'' means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default. The numerical value or the categorization derived from this analysis may also be referred to as a ''risk predictor'' or ''risk score.'' ''Credit score'' does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including, but not limited to, the loan to value ratio, the amount of down payment, or a consumer's financial assets. ''Credit score'' does not include other elements of the underwriting process or underwriting decision.

(c) For the purposes of this section, ''key factors'' means all relevant elements or reasons adversely affecting the credit score for the particular individual listed in the order of their importance based on their effect on the credit score.

(d) The information required by this section shall be provided in the same timeframe and manner as the information described in Section 1785.15.

(e) This section shall not be construed to compel a consumer reporting agency to develop or disclose a score if the agency does not (1) distribute scores that are used in connection with residential real property loans, or (2) develop scores that assist credit providers in understanding a consumer's general credit behavior and predicting his or her future credit behavior.

(f) This section shall not be construed to require a consumer credit reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to subdivision (a) of Section 1785.16, except that the consumer credit reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score. This subdivision does not apply to a consumer credit reporting agency that develops or modifies scores that are developed by another person or entity.

(g) This section shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

SEC. 4. Section 1785.15.2 is added to the Civil Code, to read:

1785.15.2. (a) In complying with Section 1785.15.1, a consumer credit reporting agency shall supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer credit reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of his or her credit behavior and predictions about his or her future credit behavior, and a statement indicating that the information and credit scoring model may be different than that used by the lender.

(b) A consumer credit reporting agency may charge a reasonable fee for providing the information required under Section 1785.15.1.

SEC. 5. Section 1785.16 of the Civil Code is amended to read:

1785.16. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the consumer credit reporting agency by the consumer or user on behalf of the consumer, the consumer credit reporting agency shall within a reasonable period of time and without charge, reinvestigate and record the current status of the disputed

information before the end of the 30-business-day period beginning on the date the agency receives notice of the dispute from the consumer or user, unless the consumer credit reporting agency has reasonable grounds to believe and determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information, as requested by the consumer credit reporting agency, to investigate the dispute. Unless the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, before the end of the five-business-day period beginning on the date the consumer credit reporting agency receives notice of dispute under this section, the agency shall notify any person who provided information in dispute at the address and in the manner specified by the person. A consumer credit reporting agency may require that disputes by consumers be in writing.

(b) In conducting that reinvestigation the consumer credit reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer by mail or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency, within five business days after that determination is made that it is terminating its reinvestigation of the item of information. In this notification, the consumer credit reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If the disputed item of information is found to be inaccurate, missing, or can no longer be verified by the evidence submitted, the consumer credit reporting agency shall promptly add, correct, or delete that information from the consumer's file.

(c) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information certifies that the information is accurate. If any information deleted from a consumer's file is reinserted in the file, the consumer credit reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency. As part of, or in addition to, this notice the consumer credit reporting agency shall, within five business days of reinserting the information, provide the consumer in writing (1) a statement that the disputed information has been reinserted, (2) a notice that the agency will provide to the consumer, within 15 days following a request, the name, address, and telephone number of any furnisher of information contacted or which contacted the consumer credit reporting agency in connection with the reinsertion, (3) the toll-free telephone number of the consumer

credit reporting agency that the consumer can use to obtain this name, address, and telephone number, and (4) a notice that the consumer has the right to a reinvestigation of the information reinserted by the consumer credit reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.

(d) A consumer credit reporting agency shall provide written notice to the consumer of the results of any reinvestigation under this subdivision, within five days of completion of the reinvestigation. The notice shall include (1) a statement that the reinvestigation is completed, (2) a consumer credit report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the consumer credit report as a result of those revisions to the consumer's file and a description of any changes made or sought by the consumer that were not made and an explanation why they were not made, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the consumer credit reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, (6) a notice that the consumer has the right to request that the consumer credit reporting agency furnish notifications under subdivision (h), (7) a notice that the dispute will remain on file with the agency as long as the credit information is used, and (8) a statement about the details of the dispute will be furnished to any recipient as long as the credit information is retained in the agency's data base. A consumer credit reporting agency shall provide the notice pursuant to this subdivision respecting the procedure used to determine the accuracy and completeness of information, not later than 15 days after receiving a request from the consumer.

(e) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(f) If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the consumer's file pursuant to subdivision (c), the consumer may file a brief statement setting forth the nature of the dispute. The consumer credit reporting agency may limit these statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(g) Whenever a statement of dispute is filed, the consumer credit reporting agency shall, in any subsequent consumer credit report

containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(h) Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a statement of dispute pursuant to subdivision (f), the consumer credit reporting agency, at the request of the consumer, shall furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (f). This notification shall be furnished to any person designated by the consumer who has, within two years prior to the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for employment purposes, or who has, within 12 months of the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for any other purpose, if these consumer credit reports contained the deleted or disputed information. The consumer credit reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request for this notification. The disclosure shall be made at or prior to the time the information is deleted pursuant to this section or the consumer's statement regarding the disputed information is received pursuant to subdivision (f).

(i) A consumer credit reporting agency shall maintain reasonable procedures to prevent the reappearance in a consumer's file and in consumer credit reports of information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (c).

(j) If the consumer's dispute is resolved by deletion of the disputed information within three business days, beginning with the day the consumer credit reporting agency receives notice of the dispute in accordance with subdivision (a), and provided that verification thereof is provided to the consumer in writing within five business days following the deletion, then the consumer credit reporting agency shall be exempt from requirements for further action under subdivisions (d), (f), and (g).

(k) If a consumer submits to a credit reporting agency a copy of a valid police report filed pursuant to Section 530.5 of the Penal Code, the consumer credit reporting agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report as a result of a violation of Section 530.5 of the Penal Code so that the information cannot be reported. The consumer credit reporting agency shall promptly notify the furnisher of the information that the information has been so blocked. Furnishers of information and consumer credit reporting agencies shall ensure that information is unblocked only upon a preponderance of the evidence establishing the

facts required under paragraph (1), (2), or (3). The permanently blocked information shall be unblocked only if: (1) the information was blocked due to fraud, or (2) the consumer agrees that the blocked information, or portions of the blocked information, were blocked in error, or (3) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions. If blocked information is unblocked pursuant to this subdivision, the consumer shall be promptly notified in the same manner as consumers are notified of the reinsertion of information pursuant to subdivision (c). The prior presence of the blocked information in the consumer credit reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys. For the purposes of this subdivision, fraud may be demonstrated by circumstantial evidence. In unblocking information pursuant to this subdivision, furnishers and consumer credit reporting agencies shall be subject to their respective requirements pursuant to this title regarding the completeness and accuracy of information.

(*l*) Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer credit reporting agency is void. A lender shall not have liability under any contractual provision for disclosure of a credit score.

SEC. 6. Section 1785.20.2 is added to the Civil Code, to read:

1785.20.2. Any person who makes or arranges loans and who uses a consumer credit score as defined in Section 1785.15.1 in connection with an application initiated or sought by a consumer for a closed end loan or establishment of an open end loan for a consumer purpose that is secured by one to four units of residential real property shall provide the following to the consumer as soon as reasonably practicable:

(a) A copy of the information identified in subdivision (a) of Section 1785.15.1 that was obtained from a credit reporting agency or was developed and used by the user of the information. In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subdivision (d).

(b) If a person who is subject to this section uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer credit reporting agency. However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, it shall be disclosed to the consumer consistent with

subdivision (c). For purposes of this subdivision, the term "enterprise" shall have the meaning provided in paragraph (6) of Section 4502 of Title 12 of the United States Code.

(c) A person subject to the provisions of this section who uses a credit score other than a credit score provided by a consumer reporting agency may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer credit reporting agency.

(d) A copy of the following notice, which shall include the name, address, and telephone number of each credit bureau providing a credit score that was used:

NOTICE TO THE HOME LOAN APPLICANT

In connection with your application for a home loan, the lender must disclose to you the score that a credit bureau distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information a credit bureau or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the credit bureau at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The credit bureau plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

(e) This section shall not require any person to do the following:

(1) Explain the information provided pursuant to Section 1785.15.1.

(2) Disclose any information other than a credit score or key factor, as defined in Section 1785.15.1.

(3) Disclose any credit score or related information obtained by the user after a loan has closed.

(4) Provide more than one disclosure per loan transaction.

(5) Provide the disclosure required by this section when another person has made the disclosure to the consumer for that loan transaction.

(f) Any person's obligation pursuant to this section shall be limited solely to providing a copy of the information that was received from the consumer credit reporting agency. No person has liability under this section for the content of that information or for the omission of any information within the report provided by the consumer credit reporting agency.

(g) As used in this section, the term ''person'' does not include an ''enterprise'' as defined in paragraph (6) of Section 4502 of Title 12 of the United States Code.

SEC. 7. This act shall become operative on July 1, 2001.

CHAPTER 979

An act to amend Sections 23050, 23100, 23800, 23817.5, 23824, 23986, 25502.1, 25503.6, 25503.8, 25503.26, 25503.85, and 25512 of, and to add Section 25500.2 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 23050 of the Business and Professions Code is amended to read:

23050. There is in the State Government a Department of Alcoholic Beverage Control. The department shall be administered through a civil executive officer who shall be known as the Director of Alcoholic Beverage Control. The director shall be appointed and shall serve as provided in Section 22 of Article XX of the Constitution and shall receive an annual salary as provided for by Chapter 6 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 23100 of the Business and Professions Code is amended to read:

23100. (a) A wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler or manufacturer, or any successor thereto, by the holder of a retail license

following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail license.

(b) A wholesaler or manufacturer, or any successor thereto, may credit the account of the retailer identified in subdivision (a) in an amount not to exceed the original sales price to the retailer of the returned beer, provided that the beer has been paid for in full.

SEC. 3. Section 23800 of the Business and Professions Code is amended to read:

23800. The department may place reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in the following situations:

(a) If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions.

(b) Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings. In the case of a suspension, the conditions may be in lieu of or in addition to the suspension.

(c) Where the department issues an order suspending or revoking only a portion of the privileges to be exercised under the license.

(d) Where findings are made by the department that the licensee has failed to correct objectionable conditions within a reasonable time after receipt of notice to make corrections given pursuant to subdivision (e) of Section 24200.

(e) At the time of transfer of a license pursuant to Section 24071.1, 24071.2, or 24072 and upon written notice to the licensee from the department adopting conditions requested by the local governing body, or its designated subordinate officer or agency, in whose jurisdiction the license is located. The request for conditions shall be supported by substantial evidence that the problems either on the premises or in the immediate vicinity identified by the local governing body or its designated subordinate officer or agency will be mitigated by the conditions. Upon receipt of the request for conditions, the department shall either adopt the conditions requested or notify the local governing body, or its designated subordinate officer or agency, in writing of its determination that there is not substantial evidence that the problem exists or that the conditions would not mitigate the problems identified. The department may adopt conditions requested pursuant to this paragraph only when the request is filed within the time authorized for a local law enforcement agency to file a protest or proposed conditions pursuant to Section 23987.

SEC. 3.3. Section 23817.5 of the Business and Professions Code is amended to read:

23817.5. (a) (1) The number of premises for which an off-sale beer and wine license is issued shall be limited to one for each 2,500, or fraction thereof, inhabitants of the city or county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city or county where the number of premises for which all off-sale beer and wine licenses are issued is more than one for each 2,500, or fraction thereof, inhabitants of the city or county.

(2) The number of premises for which an off-sale beer and wine license is issued in a city and county, in combination with the number of premises for which an off-sale general license is issued in a city and county, shall be limited to one for each 1,250, or fraction thereof, inhabitants of the city and county in which the premises are situated. No additional off-sale beer and wine license, other than a renewal or transfer or as permitted by Section 23821, shall be issued in any city and county where the number of premises for which all off-sale beer and wine licenses in combination with off-sale general licenses are issued is more than one for each 1,250, or fraction thereof, inhabitants of the city and county.

(b) Notwithstanding subdivision (a), a retail off-sale beer and wine replacement license shall be issued upon application when all of the following conditions exist:

(1) The replacement license is only for use at a premises which was licensed and operated within the past 90 days.

(2) The prior licensee abandoned the premises or the original license is subject to a bankruptcy proceeding and the prior licensee has no right to operate at that location. For purposes of this paragraph, ''abandoned'' means that the prior license has not been transferred to a new location and the prior licensee is not exercising dominion or control over the premises. ''Abandoned'' does not mean a license which has been voluntarily surrendered pursuant to department rule.

(3) The application for a replacement license shall be accompanied by a fee of one hundred dollars ($100).

(c) The following limitations shall apply to the issuance of a replacement license:

(1) The replacement license shall not be transferred to another premises.

(2) All conditions imposed on the original license shall apply to the replacement license.

(3) The original license shall be canceled by operation of law upon the issuance of the replacement license.

SEC. 3.5. Section 23824 of the Business and Professions Code is amended to read:

23824. Limitations provided by Section 23816 on the number of licensed premises shall not apply to premises located on land owned by and leased from the State of California, or to premises owned by the State of California, any incorporated city, county, city and county, airport district, or other district or public corporation of the State of California or to premises leased to the State of California or to any city or county, so long as the premises are operated as a bona fide public eating place, provided, however, that civic auditoriums owned by any incorporated city, county, city and county, or other district or any premises leased to the State of California or to any county or city for use as a civic auditorium and directly operated by a public entity shall be subject to the limitations provided by Section 23816, but shall not be required to be operated as a bona fide public eating place. The civic auditorium shall further not be subject to the provisions of Section 23793.

Licenses issued on premises owned by the state, incorporated city, county, city and county, airport district, or other district or public corporation of the State of California, or issued on premises leased to the State of California or to any county or city, shall be renewable as set forth in Section 24048. These licenses shall be excluded from the number of premises used in determining application of the limitations provided by this article. These licenses shall be subject to an original fee of six thousand dollars ($6,000) and shall be only transferable from person to person at the same premises. Prior to the issuance of these licenses, the governmental agency owning or leasing the premises shall file with the department a written request that the license be issued and a written statement setting forth the reasons why issuance of the license would be in the public interest.

A written request filed with the department by the governmental agency owning or the city or county leasing premises used as a civic auditorium and directly operated as a public entity that the license be issued need not contain a written statement setting forth the reasons why issuance of the license would be in the public interest.

Funds derived from fees collected pursuant to the amendments made to this section at the 1975–76 Regular Session of the Legislature shall be deposited in the General Fund.

SEC. 4. Section 23986 of the Business and Professions Code is amended to read:

23986. (a) Any applicant for an on-sale license shall cause a notice of the application, giving the name or names of the applicant and the premises where the business is to be conducted, to be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation, other than a legal or professional trade publication, in the

city in which the premises are situated, or if the premises are not in a city, the publication shall be made in a newspaper of general circulation nearest the premises where the business is to be conducted. The form of the notice shall be prescribed by the department. Affidavit of publication shall be filed with the department prior to the issuance of any license. The department shall adopt rules and regulations to enforce the provisions of this section.

(b) Any applicant for an on-sale or off-sale license at a premises which is located in a census tract which has an undue concentration of licenses, as defined in paragraph (2) or (3) of subdivision (a) of Section 23958.4, shall cause a notice of the application to be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation other than a legal or trade publication. Publication shall be made in the city in which the premises are situated, or if the premises are not in a city, the publication shall be made in a newspaper of general circulation nearest the premises where the business is to be conducted. The form of the notice shall be prescribed by the department. Affidavit of publication shall be filed with the department prior to the issuance of any license. The department shall adopt rules and regulations to enforce the provisions of this subdivision.

SEC. 6. Section 25500.2 is added to the Business and Professions Code, to read:

25500.2. (a) Notwithstanding Section 25500, the listing of the names, addresses, telephone numbers, E-mail addresses, or website addresses, of two or more unaffiliated on-sale retailers selling beer, wine, or distilled spirits, and operating and licensed as bona fide public eating places pursuant to Section 23038 selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry, or in person does not constitute a thing of value or prohibited inducement to the listed on-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the on-sale retailers in the direct communication.

(3) The listing does not refer only to one on-sale retailer or only to on-sale retail establishments controlled directly or indirectly by the same on-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, ''nonretail industry member'' is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler of distilled spirits or wine, regardless of any

other licenses held directly or indirectly by that person. Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E-mail addresses, or website addresses, of on-sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer that also holds an importer's license shall constitute the furnishing of a thing of value or inducement to the listed on-sale retailers in violation of this division.

SEC. 7. Section 25502.1 of the Business and Professions Code is amended to read:

25502.1. (a) Notwithstanding Section 25502, the listing of the names, addresses, telephone numbers, E-mail addresses, or website addresses, of two or more unaffiliated off-sale retailers selling the products produced, distributed or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the off-sale retailers in the direct communication.

(3) The listing does not refer only to one off-sale retailer or only to off-sale retail establishments controlled directly or indirectly by the same off-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, ''nonretail industry member'' is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler of distilled spirits or wine, regardless of any other licenses held directly or indirectly by that person. Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E-mail addresses, or website addresses, of off-sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer that also holds an importer's license shall constitute the furnishing of a thing of value or inducement to the listed off-sale retailers in violation of this division.

SEC. 8. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, the holder of a beer manufacturer's or winegrower's license or a distilled spirits manufacturer or distilled spirits manufacturer's agent may

purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located within a county of the fourth class, as defined in Section 28025 of the Government Code.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the stadium or arena owned by the on-sale licensee.

(4) The on-sale licensee serves other brands of beer in addition to the brand manufactured by the beer manufacturer , other brands of wine in addition to the brand produced by the winegrower , and other brands of distilled spirits in addition to the brand manufactured by the distilled spirits manufacturer or distilled spirits manufacturer's agent.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the holder of the beer manufacturer's or winegrower's license, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any holder of a beer manufacturer's or winegrower's license, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces a holder of a beer , wine, or distilled spirits wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces a holder of a beer , wine, or distilled spirits wholesaler's license to solicit a holder of a beer manufacturer's or winegrower's license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

SEC. 9. Section 25503.8 of the Business and Professions Code is amended to read:

25503.8. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee if all of the following conditions are met:

(1) The on-sale licensee is the owner of any of the following:

(A) A fully enclosed auditorium or theater with a fixed seating capacity in excess of 6,000 seats, at least 60 percent of the use of which is for plays or musical concerts, not including sporting events.

(B) A motion picture studio facility at which public tours are conducted for at least four million people per year.

(C) A retail, entertainment development adjacent to, and under common ownership with, a theme park, amphitheater, and motion picture production studio.

(D) A theme or amusement park and the adjacent retail, dining, and entertainment area located in the City of Los Angeles, Los Angeles County, or Orange County.

(2) The advertising space or time is purchased only in connection with one of the following:

(A) In the case of a fully enclosed auditorium or theater, in connection with sponsorship of plays or musical concerts to be held on the premises of the auditorium or theater owned by the on-sale licensee.

(B) In the case of a motion picture studio facility, in connection with sponsorship of the public tours or special events conducted at the studio facility.

(C) In the case of a retail, entertainment development, in connection with sponsorship of public tours or special events conducted at the development.

(D) In the case of a theme or amusement park and the adjacent retail, dining, and entertainment area, located in the City of Los Angeles, Los Angeles County, or Orange County, in connection with daily activities

and events at the theme or amusement park and the adjacent retail, dining, and entertainment area.

(3) The on-sale licensee serves other brands of distilled spirits, beer, or wine in addition to the brand manufactured or marketed by the distilled spirits manufacturer, distilled spirits manufacturer's agent, or beer manufacturer, or produced by the winegrower purchasing the advertising space or time.

(b) Any purchase of advertising space or time conducted pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent, and the on-sale licensee, which contract shall not in any way involve the holder of a distilled spirits, beer, or wine wholesaler's license.

(c) Any beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, or holder of a winegrower's license who, through coercion or other means, induces a holder of a beer or wine wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces a holder of a beer or wine wholesaler's license to solicit a beer manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent, or holder of a winegrower's license to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

SEC. 10. Section 25503.26 of the Business and Professions Code is amended to read:

25503.26. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a manufacturer of distilled spirits, or distilled spirits manufacturer's agent, may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, or is the lessee, or is a wholly owned subsidiary of the lessee, of an arena with a fixed seating capacity

in excess of 10,000 seats, at least 60 percent of the use of which is for horseracing events, and which is located within Los Angeles County, Alameda County, or San Mateo County.

(2) The advertising space or time is purchased only in connection with events to be held on the premises of the arena owned or leased by the on-sale licensee.

(3) The on-sale licensee serves other brands of beer, distilled spirits, or wine in addition to the brand manufactured by the beer manufacturer or distilled spirits manufacturer or produced by the winegrower purchasing the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, or the manufacturer of distilled spirits, and the on-sale licensee.

(c) Any beer manufacturer, holder of a winegrower's license, or manufacturer of distilled spirits, who, through coercion or other illegal means, induces a holder of a beer or wine or distilled spirits wholesaler's license to fulfill the contractual obligations entered into pursuant to subdivision (a) or (b) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

SEC. 11. Section 25503.85 of the Business and Professions Code is amended to read:

25503.85. (a) Notwithstanding any other provision of this chapter, a beer manufacturer or the holder of a distilled spirits manufacturer's license or winegrower's license may purchase advertising space and time from, or on behalf of, an on-sale retail licensee, that shall be limited to small notices, plaques, or signs that portray partial or full sponsorship or funding of educational programs, special fundraising and promotional events, improvements in capital projects, and the development of exhibits or facilities, if all of the following conditions are met:

(1) The on-sale licensee is a zoo or aquarium operated by a nonprofit organization that is accredited by the American Association of Zoological Parks and Aquariums.

(2) The advertising space or time is purchased only in connection with the sponsorship of activities that are held on the premises or grounds owned, leased, or controlled by the on-sale licensee.

(3) The on-sale licensee serves other brands of distilled spirits, beer, or wine within the same license category, in addition to the brand

manufactured by the distilled spirits or beer manufacturer or produced by the winegrower purchasing the advertising space or time.

(b) Nothing in this section shall be construed to permit the purchase of billboards or bench advertisements as ''advertising space.''

(c) Any purchase of advertising space or time pursuant to subdivision (a) shall be accomplished by a written contract entered into by the beer manufacturer or the holder of the distilled spirits manufacturer's license or winegrower's license and the on-sale licensee. That contract shall not in any way involve the holder of a distilled spirits wholesaler's license, or beer and wine wholesaler's license.

(d) Any beer manufacturer or holder of a distilled spirits manufacturer's license or winegrower's license who, through coercion or other means, induces a holder of a distilled spirits wholesaler's license or beer and wine wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (c) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

SEC. 12. Section 25512 of the Business and Professions Code is amended to read:

25512. (a) Notwithstanding any other provision of this division, any licensee or officer, director, employee, or agent of a licensee that holds no more than eight on-sale licenses may also hold not more than 16.67 percent of the stock of a corporation that holds beer manufacturer licenses issued pursuant to paragraph (1) of subdivision (a) of Section 23320 that are located in Sacramento, Placer, Contra Costa, San Joaquin, or Napa County, and may serve on the board of directors and as an officer or employee of that corporate licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a licensed wholesaler or winegrower.

(c) In enacting this section, the Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied-house interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 980

An act to amend Sections 25502.1 and 25503.6 of, and to add Section 25500.2 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 25500.2 is added to the Business and Professions Code, to read:

25500.2. (a) Notwithstanding Section 25500, the listing of the names, addresses, telephone numbers, E-mail addresses, or website addresses, of two or more unaffiliated on-sale retailers selling beer, wine, or distilled spirits, and operating and licensed as bona fide public eating places pursuant to Section 23038 selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry, or in person does not constitute a thing of value or prohibited inducement to the listed on-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the on-sale retailers in the direct communication.

(3) The listing does not refer only to one on-sale retailer or only to on-sale retail establishments controlled directly or indirectly by the same on-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, ''nonretail industry member'' is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent

of that entity, or a wholesaler of distilled spirits or wine, regardless of any other licenses held directly or indirectly by that person. Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E-mail addresses, or website addresses, of on-sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer that also holds an importer's license shall constitute the furnishing of a thing of value or inducement to the listed on-sale retailers in violation of this division.

SEC. 2. Section 25502.1 of the Business and Professions Code is amended to read:

25502.1. (a) Notwithstanding Section 25502, the listing of the names, addresses, telephone numbers, E-mail addresses, or website addresses, of two or more unaffiliated off-sale retailers selling the products produced, distributed or imported by a nonretail industry member in response to a direct inquiry from a consumer received by telephone, by mail, by electronic Internet inquiry or in person does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, provided all of the following conditions are met:

(1) The listing does not also contain the retail price of the product.

(2) The listing is the only reference to the off-sale retailers in the direct communication.

(3) The listing does not refer only to one off-sale retailer or only to off-sale retail establishments controlled directly or indirectly by the same off-sale retailer.

(4) The listing is made by, or produced by, or paid for, exclusively by the nonretail industry member making the response.

(b) For the purposes of this section, ''nonretail industry member'' is defined as a manufacturer, including, but not limited to, a beer manufacturer, winegrower, or distiller of alcoholic beverages or an agent of that entity, or a wholesaler of distilled spirits or wine, regardless of any other licenses held directly or indirectly by that person. Except as specifically provided above, any payment for, making or production, either directly or indirectly, listing the names, addresses, telephone numbers, E-mail addresses, or website addresses, of off-sale retailers selling beer otherwise authorized by this section by a wholesaler of beer or by a wholesaler of beer that also holds an importer's license shall constitute the furnishing of a thing of value or inducement to the listed off-sale retailers in violation of this division.

SEC. 3. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, the holder of a beer manufacturer's or winegrower's license or a distilled spirits manufacturer or distilled spirits manufacturer's agent may

purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located within a county of the fourth class, as defined in Section 28025 of the Government Code.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the stadium or arena owned by the on-sale licensee.

(4) The on-sale licensee serves other brands of beer in addition to the brand manufactured by the beer manufacturer, other brands of wine in addition to the brand produced by the winegrower, and other brands of distilled spirits in addition to the brand manufactured by the distilled spirits manufacturer or distilled spirits manufacturer's agent.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the holder of the beer manufacturer's or winegrower's license, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any holder of a beer manufacturer's or winegrower's license, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces a holder of a beer, wine, or distilled spirits wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces a holder of a beer, wine, or distilled spirits wholesaler's license to solicit a holder of a beer manufacturer's or winegrower's license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

SEC. 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 981

An act to repeal and add Section 2892 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 2892 of the Public Utilities Code is repealed.

SEC. 2. Section 2892 is added to the Public Utilities Code, to read:

2892. (a) As used in this section, the term ''commercial mobile radio service'' has the same meaning as the term ''commercial mobile service,'' as defined in subsection (d) of Section 332 of Title 47 of the United States Code.

(b) A provider of commercial mobile radio service shall provide access for end users of that service to the local emergency telephone systems described in the Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code). ''911'' shall be the primary access number for those emergency systems. A provider of commercial mobile radio service, in accordance with all applicable

Federal Communication Commission orders, shall transmit all ''911'' calls from technologically compatible commercial mobile radio service communication devices without requiring user validation or any similar procedure. A provider of commercial mobile radio service may not charge any airtime, access, or similar usage charge for any ''911'' call placed from a commercial mobile radio service telecommunications device to a local emergency telephone system.

(c) A ''911'' call from a commercial mobile radio service telecommunications device may be routed to a public safety answering point other than the Department of the California Highway Patrol only if the alternate routing meets all of the following requirements:

(1) The ''911'' call originates from a location other than from a highway or county road under the jurisdiction of the Department of the California Highway Patrol.

(2) The alternate routing is economically and technologically feasible.

(3) The alternate routing will benefit public safety and reduce burdens on dispatchers for the Department of the California Highway Patrol.

(4) The Department of the California Highway Patrol, the Department of General Services, and the proposed alternate public safety answering point, in consultation with the wireless industry, providers of ''911'' selective routing service, and local law enforcement officials, determine that it is in the best interest of the public and will provide more effective emergency service to the public to route ''911'' calls that do not originate from a highway or county road under the jurisdiction of the Department of the California Highway Patrol to another public safety answering point.

CHAPTER 982

An act to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any

reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, ''unusual circumstances'' means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.9 is added to the Government Code, to read:

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express

provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

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 983

An act to add Division 20.7 (commencing with Section 30988) to the Public Resources Code, relating to ocean resources.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Division 20.7 (commencing with Section 30988) is added to the Public Resources Code, to read:

DIVISION 20.7. SANTA MONICA BAY RESTORATION

30988. (a) The Legislature finds and declares that Santa Monica Bay is a public trust for present and future generations of Californians, and an invaluable element in the ecosystem of southern California.

(b) The biological health and recreational resources of Santa Monica Bay are threatened by the historical accumulation of DDT, PCBs and other toxic pollutants, oil spills, and industrial discharges, increasing with population pressures in the region.

(c) Santa Monica Bay has been identified as a federal Superfund site, and designated under the United States Environmental Protection Agency's National Estuary Program. Since 1988, the United States Environmental Protection Agency has designated the Santa Monica Bay Restoration Project as an agency to plan for the Santa Monica Bay's restoration. The State of California has expended millions of dollars for

the administration of the Santa Monica Bay Restoration Project, and 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 of the Public Resources Code) (Proposition 12 at the March 7, 2000, primary election) earmarks up to twenty-five million dollars ($25,000,000) for Santa Monica Bay restoration projects, as identified by the Santa Monica Bay Restoration Project.

(d) The purposes, role, structure, and jurisdiction of the Santa Monica Bay Restoration Project are not established in state law.

(e) There is no lead agency designated and required to monitor, assess, or coordinate state programs affecting the beneficial uses or restoration and enhancement of the Santa Monica Bay, like the role of the San Francisco Bay Conservation and Development Commission with respect to San Francisco Bay. There are several fragmented, overlapping agencies with jurisdiction over the Santa Monica Bay, but no requirement for coordination or planning of their activities.

30988.1. The Secretary for Environmental Protection, in consultation with the Secretary of the Resources Agency, and in coordination with a designee of the Santa Monica Bay Restoration Project, shall make recommendations to the Legislature as to the most efficient and environmentally sound measures to coordinate state policies to restore and enhance the Santa Monica Bay for future generations. Specifically, the parties, in consultation, shall consider whether long-standing environmental issues merit the development of a single lead agency and whether the Santa Monica Bay Restoration Project is an institutional point of departure for such an agency. The Secretary for Environmental Protection shall make the recommendations to the Legislature no later than December 1, 2001.

30988.2. There is in the State Water Resources Control Board the Santa Monica Bay Restoration Project, an informational forum, planning body, and grant-making agency, the purpose of which shall be to assess the biological condition and state of Santa Monica Bay, including its public purposes such as recreation, aesthetic value, and environmental education, with the goal of preserving, restoring, and enhancing the ocean ecosystem and public interest values of the Santa Monica Bay for future generations.

30988.3. The Santa Monica Bay Restoration Project may continue to operate within the funding sources provided by, and the organizational structure of, the Los Angeles Regional Water Quality Control Board.

30988.4. The project shall prioritize in its educational, monitoring, and bond proceeds expenditure decisions, proposals or projects designed to achieve bay restoration objectives including, but not limited to, all of the following:

(a) The reduction or elimination of nonpoint source pollution.
(b) The reduction or prevention of the threat of oil spills and leaks.
(c) The reduction and prevention of beach erosion.
(d) The reduction and prevention of public health threats from pollution.
(e) The reduction and prevention of loss of wetlands.
(f) Effective enforcement of appropriate environmental laws.
(g) Public education and warnings of any dangers of consuming contaminated seafood.
(h) Increased public education concerning the Santa Monica Bay in collaboration with universities and grades K-12 schools.
(i) Assuring that ocean resources are accessible to all Californians regardless of socioeconomic status, and are preserved and enhanced for future generations.

CHAPTER 984

An act to add Article 7 (commencing with Section 350) to Chapter 4 of Division 1 of the Business and Professions Code, and to add Section 11019.9 to the Government Code, relating to privacy.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Article 7 (commencing with Section 350) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 7. Personal Information and Privacy Protection

350. (a) There is hereby created in the Department of Consumer Affairs an Office of Privacy Protection under the direction of the Director of the Department of Consumer Affairs and the Secretary of the State and Consumer Services Agency. The office's purpose shall be protecting the privacy of individuals' personal information in a manner consistent with the California Constitution by identifying consumer problems in the privacy area and facilitating development of fair information practices in adherence with the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(b) The office shall inform the public of potential options for protecting the privacy of, and avoiding the misuse of, personal information.

(c) The office shall make recommendations to organizations for privacy policies and practices that promote and protect the interests of California consumers.

(d) The office may promote voluntary and mutually agreed upon nonbinding arbitration and mediation of privacy related disputes where appropriate.

(e) The Director of the Department of Consumer Affairs shall do all of the following:

(1) Receive complaints from individuals concerning any persons' obtaining, compiling, maintaining, using, disclosing or disposing of personal information in a manner that may be potentially unlawful or violate a stated privacy policy relating to that individual, and provide advice, information, and referral where available.

(2) Provide information to consumers on effective ways of handling complaints that involve violations of privacy related laws, including identity theft and identity fraud. Where appropriate local, state, or federal agencies are available to assist consumers with those complaints, the director shall refer those complaints to those agencies.

(3) Develop information and educational programs and materials to foster public understanding and recognition of the purposes of this article.

(4) Investigate and assist in the prosecution of identity theft and other privacy related crimes, and, as necessary, coordinate with local, state, and federal law enforcement agencies in the investigation of similar crimes.

(5) Assist and coordinate in the training of local, state, and federal law enforcement agencies regarding identity theft and other privacy related crimes, as appropriate.

(6) The authority of the office, the director, or the secretary, to adopt regulations under this article shall be limited exclusively to those regulations necessary and appropriate to implement subdivisions (b), (c), (d), and (e).

351. Commencing in 2003, the director shall report to the Legislature on an annual basis, on or before January 31, detailing the activities engaged in by the department under this article.

352. (a) Subject to subdivision (b), the department shall commence activities under this article no later than January 1, 2002.

(b) The provisions of this article shall only be operative for those years in which there is an appropriation from the General Fund in the Budget Act to fund the activities required by this article.

SEC. 2. Section 11019.9 is added to the Government Code, to read:

11019.9. Each state department and state agency shall enact and maintain a permanent privacy policy, in adherence with the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code), that includes, but is not limited to, the following principles:

(a) Personally indentifiable information is only obtained through lawful means.

(b) The purposes for which personally identifiable data are collected are specified at or prior to the time of collection, and any subsequent use is limited to the fulfillment of purposes not inconsistent with those purposes previously specified.

(c) Personal data shall not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the subject of the data, or as authorized by law or regulation.

(d) Personal data collected must be relevant to the purpose for which it is collected.

(e) The general means by which personal data is protected against loss, unauthorized access, use modification or disclosure shall be posted, unless such disclosure of general means would compromise legitimate state department or state agency objectives or law enforcement purposes.

(f) Each state department or state agency shall designate a position within the department or agency, the duties of which shall include, but not be limited to, responsibility for the privacy policy within that department or agency.

CHAPTER 985

An act to amend Section 12805 of, to add Sections 1674, 1674.4, and 1674.6 to, to add and repeal Sections 1674.2, 12814.1, and 13803 of, and to amend, repeal, and add Sections 12808, 12814, and 12818 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. This act shall be known as, and may be cited as, the Brandi Mitock Safe Drivers Act.

SEC. 2. The Legislature finds and declares that, currently, there is no minimum vision requirement to operate a motor vehicle in this state, thus creating a significant limitation in the state's efforts to ensure maximum safety on the roads.

SEC. 3. Section 1674 is added to the Vehicle Code, to read:

1674. The department shall develop a program to foster a positive atmosphere that is conducive to encouraging drivers to succeed in passing any visual tests or written or behind-the-wheel driving tests administered by the department.

SEC. 4. Section 1674.2 is added to the Vehicle Code, to read:

1674.2. (a) The department shall prepare a report listing all restricted driver's licenses issued during the 2001 calendar year. The report shall contain a category describing the condition that required issuance of the restricted license and shall be organized by that category. The report shall describe the restriction that was imposed in each case. The department shall submit the report to the Legislature on or before January 31, 2002.

(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. 5. Section 1674.4 is added to the Vehicle Code, to read:

1674.4. In order to address any conscious or unconscious bias against a driver by persons administering the department's visual tests or written or behind-the-wheel driving tests, the department shall implement a component in its training and development program for test administrators that encourages sensitivity to the issues of youth and aging.

SEC. 6. Section 1674.6 is added to the Vehicle Code, to read:

1674.6. (a) The Legislature finds and declares that persons should be provided with transportation alternatives when their privilege to drive is lost because of failure to pass visual tests or written or behind-the-wheel driving tests. While a partial obligation for addressing this issue rests with families, communities, social service agencies, and local governments, the Legislature recognizes an obligation to promote, facilitate, and share in the funding of alternative modes of transportation for persons who have lost their driving privilege.

(b) Accordingly, it is the intent of the Legislature, not later than January 1, 2003, to provide an affordable and equitable mode of transportation to fulfill the reasonable transportation needs of persons who have lost their driver's licenses due to a failure to pass a visual test or a written or behind-the-wheel driving test.

(c) In furtherance of the intent set forth in subdivision (b), the Business, Transportation and Housing Agency shall establish a task force to analyze potential sources of funding and modes of transportation for persons who have lost their driver's licenses due to a failure to pass a visual test or a written or behind-the-wheel driving test. The Business, Transportation and Housing Agency shall prepare and submit a report

on the findings of the task force to the Legislature not later than July 1, 2001.

SEC. 7. Section 12805 of the Vehicle Code is amended to read:

12805. The department shall not issue a driver's license to, or renew a driver's license of, any person:

(a) Who is not of legal age to receive a driver's license.

(b) Whose best corrected visual acuity is 20/200 or worse in that person's better eye, as verified by an optometrist or ophthalmologist. No person may use a bioptic telescopic or similar lens to meet the 20/200 visual acuity standards.

(c) Who is unable, as shown by examination, to understand traffic signs or signals or who does not have a reasonable knowledge of the provisions of this code governing the operations of vehicles upon the highways.

(d) When it is determined, by examination or other evidence, that the person is unable to safely operate a motor vehicle upon a highway.

(e) Who is unable to read and understand simple English used in highway traffic and directional signs. This subdivision does not apply to any person holding an operator's or chauffeur's license issued by this state and valid on September 11, 1957.

(f) Who holds a valid driver's license issued by a foreign jurisdiction unless the license has been surrendered to the department, or is lost or destroyed.

(g) Who has ever held, or is the holder of, a license to drive issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that license has been suspended by reason, in whole or in part, of a conviction of a traffic violation until the suspension period has terminated, except that the department may issue a license to the applicant if, in the opinion of the department, it will be safe to issue a license to a person whose license to drive was suspended by a state that is not a party to the Driver License Compact provided for in Chapter 6 (commencing with Section 15000) of Division 6.

(h) Who has ever held, or is the holder of, a license to drive issued by another state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, and that license has been revoked by reason, in whole or in part, of a conviction of a traffic violation, until the revocation has been terminated or after the expiration of one year from the date the license was revoked, whichever occurs first, except that the department may issue a license to the applicant if, in the opinion of the department, it will be safe to issue a license to a person whose license to drive was revoked by a state that is not a party to the Driver License Compact provided for in Chapter 6 (commencing with Section 15000) of Division 6.

SEC. 8. Section 12808 of the Vehicle Code is amended to read:

12808. (a) The department shall, before issuing or renewing any license, check the record of the applicant for conviction of traffic violations, traffic accidents, reports filed pursuant to Section 103900 of the Health and Safety Code, reports filed pursuant to Section 13803, or notices issued pursuant to Section 21061.

(b) The department shall, before issuing or renewing any license, check the record of the applicant for notices of failure to appear in court filed with it and shall withhold or shall not issue a license to any applicant who has violated his or her written promise to appear in court unless the department has received a certificate issued by the magistrate or clerk of the court hearing the case in which the promise was given showing that the case has been adjudicated or unless the applicant's record is cleared as provided in Chapter 6 (commencing with Section 41500) of Division 17. In lieu of the certificate of adjudication, a notice from the court stating that the original records have been lost or destroyed shall permit the department to issue a license.

(c) (1) Any notice received by the department pursuant to Section 40509, 40509.1, or 40509.5, except subdivision (c) of Section 40509.5, that has been on file five years may be removed from the department records and destroyed at the discretion of the department.

(2) Any notice received by the department under subdivision (c) of Section 40509.5 that has been on file 10 years may be removed from the department records and destroyed at the discretion of the department.

(d) This section 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. 9. Section 12808 is added to the Vehicle Code, to read:

12808. (a) The department shall, before issuing or renewing any license, check the record of the applicant for conviction of traffic violations and traffic accidents.

(b) The department shall, before issuing or renewing any license, check the record of the applicant for notices of failure to appear in court filed with it and shall withhold or shall not issue a license to any applicant who has violated his or her written promise to appear in court unless the department has received a certificate issued by the magistrate or clerk of the court hearing the case in which the promise was given showing that the case has been adjudicated or unless the applicant's record is cleared as provided in Chapter 6 (commencing with Section 41500) of Division 17. In lieu of the certificate of adjudication, a notice from the court stating that the original records have been lost or destroyed shall permit the department to issue a license.

(c) (1) Any notice received by the department pursuant to Section 40509, 40509.1, or 40509.5, except subdivision (c) of Section 40509.5,

that has been on file five years may be removed from the department records and destroyed at the discretion of the department.

(2) Any notice received by the department under subdivision (c) of Section 40509.5 that has been on file 10 years may be removed from the department records and destroyed at the discretion of the department.

(d) This section shall become operative on January 1, 2011.

SEC. 10. Section 12814 of the Vehicle Code is amended to read:

12814. (a) Application for renewal of a license shall be made at an office of the Department of Motor Vehicles by the person to whom the license was issued. The department, in its discretion, may require an examination of the applicant as upon an original application, or an examination deemed by the department to be appropriate considering the licensee's record of convictions and accidents, or an examination deemed by the department to be appropriate in relation to evidence of a condition that may affect the ability of the applicant to safely operate a motor vehicle. Except as provided in Section 12814.1, the age of a licensee, by itself, shall not constitute evidence of a condition requiring an examination of the driving ability. If the department finds any evidence of a condition requiring an examination, the department shall disclose the evidence to the applicant or licensee. In the event that person is absent from the state at the time the license expires, the Director of Motor Vehicles may extend the license for a period of one year from the expiration date of the license.

(b) Renewal of a driver's license shall be under terms and conditions prescribed by the department.

(c) The department may adopt and administer regulations it deems necessary for the public safety in the implementation of a program of selective testing of applicants, and, with reference to this section, the department may waive tests for purposes of evaluation of selective testing procedures.

(d) This section 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. 11. Section 12814 is added to the Vehicle Code, to read:

12814. (a) Application for renewal of a license shall be made at an office of the Department of Motor Vehicles by the person to whom the license was issued. The department may in its discretion require an examination of the applicant as upon an original application, or an examination deemed by the department to be appropriate considering the licensee's record of convictions and accidents, or an examination deemed by the department to be appropriate in relation to evidence of a condition which may affect the ability of the applicant to safely operate a motor vehicle. The age of a licensee, by itself, shall not constitute evidence of a condition requiring an examination of the driving ability.

If the department finds any evidence, the department shall disclose the evidence to the applicant or licensee. In the event the person is absent from the state at the time the license expires, the Director of Motor Vehicles may extend the license for a period of one year from the expiration date of the license.

(b) Renewal of a driver's license shall be under terms and conditions prescribed by the department.

(c) The department may adopt and administer those regulations as shall be deemed necessary for the public safety in the implementation of a program of selective testing of applicants, and, with reference to this section, the department may waive tests for purposes of evaluation of selective testing procedures.

(d) This section shall become operative on January 1, 2011.

SEC. 12. Section 12814.1 is added to the Vehicle Code, to read:

12814.1. (a) On or before June 1, 2001, the department shall evaluate the effects of physical conditions, ailments, and other factors on the ability to safely operate a motor vehicle. The department shall include in its evaluation indicators and predictors relating to the impairment of the ability to drive safely, including, but not limited to, driving records. In developing its evaluation, the department shall consider input from any interested party. The department shall submit the results of its evaluation to the Legislature on or before July 15, 2001.

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

SEC. 13. Section 12818 of the Vehicle Code is amended to read:

12818. (a) Upon receipt of a request for reexamination and presentation of a legible copy of a notice of reexamination by a person issued the notice pursuant to Section 21061, or upon receipt of a report from a local health officer issued pursuant to subdivision (b) of Section 103900 of the Health and Safety Code, the department shall reexamine the person's qualifications to operate a motor vehicle, including a demonstration of the person's ability to operate a motor vehicle as described in Section 12804.9.

(b) Based on the department's reexamination of the person's qualifications pursuant to subdivision (a), the department shall determine if either of the following actions should be taken:

(1) Suspend or revoke the driving privilege of that person if the department finds that any of the grounds exist which authorize the refusal to issue a license.

(2) Restrict, make subject to terms and conditions of probation, suspend, or revoke the driving privilege of that person based upon the records of the department as provided in Chapter 3 (commencing with Section 13800).

(c) As an alternative to subdivision (a), the department may suspend or revoke the person's driving privilege as provided under Article 2 (commencing with Section 13950) of Chapter 3.

(d) Upon request, the department shall notify the law enforcement agency which employs the traffic officer who issued the notice of reexamination described in subdivision (a) of the results of the reexamination.

(e) This section 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. 14. Section 12818 is added to the Vehicle Code, to read:

12818. (a) Upon receipt of a request for reexamination and presentation of a legible copy of a notice of reexamination by a person issued the notice pursuant to Section 21061, the department shall reexamine the person's qualifications to operate a motor vehicle pursuant to Section 13801, notwithstanding the notice requirement of Section 13801.

(b) Based on the department's reexamination of the person's qualifications pursuant to subdivision (a), the department shall determine if either of the following actions should be taken:

(1) Suspend or revoke the driving privilege of that person if the department finds that any of the grounds exist which authorize the refusal to issue a license.

(2) Restrict, make subject to terms and conditions of probation, suspend, or revoke the driving privilege of that person based upon the records of the department as provided in Chapter 3 (commencing with Section 13800).

(c) As an alternative to subdivision (a), the department may suspend or revoke the person's driving privilege as provided under Article 2 (commencing with Section 13950) of Chapter 3.

(d) Upon request, the department shall notify the law enforcement agency which employs the traffic officer who issued the notice of reexamination of the results of the reexamination.

(e) This section shall become operative on January 1, 2011.

SEC. 15. Section 13803 is added to the Vehicle Code, to read:

13803. (a) The department shall conduct a reexamination, including a demonstration of the person's ability to operate a motor vehicle as described in Section 12804.9, to determine whether the driving privilege of any person to operate a motor vehicle should be suspended or revoked, or whether terms or conditions of probation should be imposed upon receiving information from any member of the vehicle operator's family within 3 degrees of consanguinity, or the operator's spouse, who has reached 18 years of age, except that no person

may report the same family member pursuant to this section more than one time during a 12-month period.

(b) The report described in subdivision (a) shall state that the person filing the report reasonably and in good faith believes that the operator cannot safely operate a motor vehicle. The report shall be based upon personal observation or physical evidence of a physical or medical condition that has the potential to impair the ability to drive safely, or upon personal knowledge of a driving record that, based on traffic citations or other evidence, indicates an unsafe driver. The observation or physical evidence, or the driving record, shall be described in the report, or the report shall be based upon an investigation by a law enforcement officer.

(c) No person who makes a report in good faith pursuant to this section shall be civilly or criminally liable for making that report.

(d) This section 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.

CHAPTER 986

An act to amend Sections 406, 99220, 99221, 99222, 99224, 99225, and 99225.5 of, and to add and repeal Article 5.7 (commencing with Section 44309) of Chapter 2 of Part 25 of, the Education Code, relating to teachers, and making an appropriation therefor.

[Approved by Governor September 26, 2000. Filed with Secretary of State September 30, 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) There is a shortage of experienced qualified teachers in schools that have been deemed hard to staff schools.

(2) Large numbers of the teachers at these schools currently have temporary or emergency credentials.

(3) The pupils in these schools will benefit most from qualified veteran credentialed teachers who bring the wisdom of years of practical experience.

(b) Therefore, it is the intent of the Legislature in enacting the act adding this section to accomplish all of the following:

(1) Enhance the ability of candidates for teaching credentials to successfully complete their credentialing program.

(2) Train teachers for more effective service in hard to staff schools.

(3) Retain teachers employed in hard to staff schools.

(4) Place special emphasis on teaching English learners.

(5) Utilize new technologies and distance learning techniques to demonstrate program and cost-efficiencies in teacher training.

SEC. 2. Section 406 of the Education Code is amended to read:

406. (a) The Regents of the University of California are requested to authorize the President of the University of California or his or her designee to jointly develop English Language Development Professional Institutes with the Chancellor of the California State University, the Chancellor of the California Community Colleges, the independent colleges and universities, and the Superintendent of Public Instruction, or their designees. In order to provide maximum access, the institutes shall be offered at sites widely distributed throughout the state, which shall include programs offered through instructor-led, interactive online courses, in accordance with existing state law. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through existing state approved online instructor-led courses, programs, or both. The California subject matter projects, an intersegmental, discipline-based professional development network administered by the University of California, is requested to be the organizing entity for the institutes and follow-up programs.

(b) (1) Commencing in the 1999–2000 academic year, the institutes shall provide instruction for school teams from each school participating in the program established pursuant to this chapter. Commencing in the 2000–01 academic year, the institutes may provide instruction for school teams serving English language learners in kindergarten and grades 1 to 12, inclusive. A school team shall include teachers who do not hold cross-cultural or bilingual cross-cultural certificates or their equivalents, teachers who hold those certificates or their equivalents, and a schoolsite administrator. The majority of the team shall be teachers who do not hold those cross-cultural certificates or their equivalents. If the participating school team employs instructional assistants who provide instructional services to English language learners, the team may include these instructional assistants.

(2) Commencing in July 2000, the English Language Development Institutes shall provide instruction to an additional 10,000 participants. These participants shall be in addition to the 5,000 participants authorized as of January 1, 2000. Commencing July 2001, and each fiscal year thereafter, the number of participants receiving instruction through the English Language Development Institutes shall be specified in the annual Budget Act.

(3) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' reading scores are at or below the 40th percentile on the English language arts portion of the achievement test authorized by Section 60640.

(B) Schools in which a high percentage of pupils score below grade level on the English language development assessment authorized by Section 60810, when it is developed.

(C) Schools with a high number of new, underprepared, and noncredentialed teachers. Underprepared teachers shall be defined as teachers who do not possess a cross-cultural or bilingual cross-cultural certificate, or their equivalents.

(D) Schools in which the enrollment of English language learners exceeds 25 percent of the total school enrollment.

(E) Schools with a full complement of team members as described in paragraph (1).

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (C) of paragraph (2).

(c) Each team member who satisfactorily completes an institute authorized by this section shall receive a stipend, commensurate with the duration of the institute, of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000), as determined by the University of California.

(d) Instruction provided by the institutes shall be consistent with state-adopted academic content standards and with the English language development standards adopted pursuant to Section 60811.

(e) (1) Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 80 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented during the following school year with no fewer than 80 hours nor more than 120 hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of English language learners at that school.

(2) Instruction at the institutes shall be of sufficient scope, depth, and duration to fully equip instructional personnel to offer a comprehensive and rigorous instructional program for English language learners and to assess pupil progress so these pupils can meet the academic content and performance standards adopted by the State Board of Education. The instruction shall be designed to increase the capacity of teachers and other school personnel to provide and assess standards-based instruction for English language learners.

(3) The instruction shall be multidisciplinary and focus on instruction in disciplines for which the State Board of Education has adopted academic content standards. The instruction shall also be research-based and provide effective models of professional development in order to ensure that instructional personnel increase their skills, at a minimum, in all of the following:

(A) Literacy instruction and assessment for diverse pupil populations, including instruction in the teaching of reading that is research-based and consistent with the balanced, comprehensive strategies required under Section 44757.

(B) English language development and second language acquisition strategies.

(C) Specially designed instruction and assessment in English.

(D) Application of appropriate assessment instruments to assess language proficiency and utilization of benchmarks for reclassification of pupils from English language learners to fully English proficient.

(E) Examination of pupil work as a basis for the alignment of standards, instruction, and assessment.

(F) Use of appropriate instructional materials to assist English language learners to attain academic content standards.

(G) Instructional technology and its integration into the school curriculum for English language learners.

(H) Parent involvement and effective practices for building partnerships with parents.

(f) It is the intent of the Legislature that a local educational agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of the course requirements to an enrolled candidate who satisfactorily completes a California English Language Development Institute program if the program has been certified by the Commission on Teacher Credentialing as meeting preparation standards.

(g) Nothing in this section shall be construed to prohibit a team member from attending an institute authorized by this section in more than one academic year.

(h) This section shall not apply to the University of California unless and until the Regents of the University of California act, by resolution, to make it applicable.

SEC. 3. Article 5.7 (commencing with Section 44309) is added to Chapter 2 of Part 25 of the Education Code, to read:

Article 5.7. Telecommunications-Based Professional Development Pilot Project for Teachers in Hard to Staff Schools

44309. (a) The Los Angeles County Office of Education may design and implement a one-year telecommunications-based pilot project for the purpose of offering an intensive professional growth program for teachers in hard to staff schools.

(b) The pilot project shall demonstrate the efficacy of using an interactive, online, telecommunications-based learning model that supports the professional development component of the Beginning Teacher Support and Assessment Program set forth in Article 4.5 (commencing with Section 44279.1) and the California Pre-Internship Teaching Program set forth in Article 5.6 (commencing with Section 44305).

(c) The pilot project shall use the technologies of telecommunications-based distance learning, satellites for showing promising practices and overcoming time and space barriers, and videoconferencing for interactive group work and materials sharing.

(d) First-year and second-year elementary school teachers who are currently employed in a hard to staff school and eligible to participate in the Beginning Teacher Support and Assessment Program set forth in Article 4.5 (commencing with Section 44279.1) or the California Pre-Internship Teaching Program set forth in Article 5.6 (commencing with Section 44305) are eligible to apply to participate in the pilot project, for which they shall receive academic credit towards a preliminary teaching credential.

(e) The Los Angeles County Office of Education, in partnership with the California State University system, shall develop the content of the professional development offered by the pilot project, which shall be aligned with the California Standards for the Teaching Profession and the academic content standards for kindergarten and grades 1 to 12, inclusive.

(f) The Los Angeles County Office of Education shall contract for an independent extensive evaluation of the pilot project to determine the extent to which the project helped to retain participants in the teaching profession, reduced costs of providing core content based professional development to new teachers assigned to hard to staff schools, improved the classroom management skills of new teachers, and improved pupil learning. The Los Angeles County Office of Education shall submit a report of the evaluation to the Legislature before continuing or expanding the program.

(g) For purposes of this article, a ''hard to staff school'' is a school in which 20 percent or more of the teachers assigned to provide instructional services at the school are serving under an internship

credential, emergency permit, or waiver granted by the Commission on Teacher Credentialing or have served less than two years.

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

SEC. 4. Section 99220 of the Education Code is amended to read:

99220. The Regents of the University of California are requested to jointly develop with the Trustees of California State University and the independent colleges and universities, the California Reading Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) (1) In June 1999, the University of California and its institutes' partners shall commence instruction for 6,000 participants who either provide direct instruction in reading to pupils in kindergarten or in grade 1, 2, or 3, or who supervise beginning teachers of reading. Commencing in July 2000, the institutes shall provide instruction for an additional 14,000 participants who either provide direct instruction in reading to pupils, including special education pupils, in prekindergarten, kindergarten or in grade 1, 2, or 3, or supervise beginning teachers of reading. Of the 14,000 new positions, at least 2,000 shall be reserved for prekindergarten teachers who teach in state preschool programs located in the attendance area of low-performing schools in order to link prekindergarten literacy development and reading readiness to the state's reading goals for pupils enrolled in kindergarten and grades 1 to 3, inclusive. If there are not enough applicants to fill the 2,000 positions, the remaining positions may be filled by teachers of pupils enrolled in kindergarten or any of grades 1 to 3, inclusive.

(2) Ongoing support for second-year participants shall include a second-year institute focusing on the use of instructional materials, leveraging of school district resources, and the development of teacher leadership within the school district to improve pupil achievement in reading.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator, with the majority of the team composed of beginning teachers.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' reading scores are at or below the 40th percentile on the reading portion of the achievement test authorized by Section 60640.

(B) Schools with a high number of beginning and noncredentialed teachers.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a full complement of team members as outlined above.

(E) School teams committed to participate in the Elementary School Intensive Reading Program established pursuant to Article 1 (commencing with Section 53025) of Chapter 16 of Part 28 for a minimum of three years.

(F) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (B) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of reading in a manner consistent with the standard for a comprehensive reading instruction program that is research-based, as described in subparagraphs (A) and (B) of paragraph (4) of subdivision (b) of Section 44259, and shall include all of the following components:

(A) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic explicit phonics, and decoding skills.

(B) A strong literature, language and comprehension component with a balance of oral and written language.

(C) Ongoing diagnostic techniques that inform teaching and assessment.

(D) Early intervention techniques.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum framework on reading/language arts adopted by the State Board of Education.

(d) (1) Each participant who satisfactorily completes an institute authorized by this section shall receive a stipend, commensurate with the duration of the institute, of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000), as determined by the University of California.

(2) A participant in an institute authorized by this section who satisfactorily completes additional institute activities or leadership and mentoring responsibilities in his or her school in subsequent years in accordance with institute guidelines shall receive a stipend, commensurate with the participant's responsibilities, of not less than five hundred dollars ($500) and not more than two thousand dollars

($2,000), as determined by the University of California. It is the intent of the Legislature that stipends paid to participants under this paragraph average approximately one thousand dollars ($1,000) per stipend recipient per year.

(e) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course, and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in reading.

(f) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of reading course requirements to an enrolled candidate who satisfactorily completes a California Reading Professional Development Institute program if the institute has been certified by the Commission on Teacher Credentialing as meeting reading preparation standards.

(g) Nothing in this section shall be construed to prohibit a participant from attending an institute authorized by this section in more than one academic year.

(h) ''Beginning teachers,'' for purposes of this article, are teachers with three or fewer years of teaching experience.

SEC. 5. Section 99221 of the Education Code is amended to read:

99221. The Regents of the University of California are requested to develop jointly with the Trustees of the California State University and the independent colleges and universities, the High School English Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 12,000 participants who either provide direct instruction in reading and writing to California public

high school pupils in grades 9 to 12, inclusive, or supervise beginning teachers of high school reading and writing.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but is not limited to, all of the following:

(A) Schools whose pupils' scores on the English language arts portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of the members of their schools' English departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Teams of teachers from various departments within a school.

(E) Schools with a high number of beginning and noncredentialed teachers.

(F) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (E) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of reading and writing in a manner consistent with the standard for a comprehensive reading and writing instruction program that is research-based, as described in subparagraphs (A) and (B) of paragraph (4) of subdivision (b) of Section 44259.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on reading/language arts for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an

equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in English language arts.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of English language arts requirements to an enrolled candidate who satisfactorily completes a High School English Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting English language arts standards.

SEC. 6. Section 99222 of the Education Code is amended to read:

99222. The Regents of the University of California are requested to develop jointly with the Trustees of California State University and the independent colleges and universities, the High School Mathematics Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,500 participants who either provide direct instruction in mathematics to California public high school pupils in grades 9 to 12, inclusive, or supervise beginning teachers of high school mathematics.

(b) (1) The institutes shall provide instruction for school teams from each participating school. The school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of mathematics in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based and shall include all of the following components:

(A) Instruction in topics commonly found in high school mathematics courses, including, but not limited to, geometry, algebra II, trigonometry, and calculus, that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and the high school exit examination authorized pursuant to Section 60850 and to prepare pupils for advanced placement and college coursework.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Early intervention techniques for pupils experiencing difficulty in mathematics.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in mathematics.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes a High School

Mathematics Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 7. Section 99224 of the Education Code is amended to read:

99224. The Regents of the University of California are requested to develop jointly with the Trustees of the California State University and the independent colleges and universities, the Algebra Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,000 participants who either provide direct instruction in algebra or the coursework in the two years leading to algebra to pupils enrolled in a public school in grades 6 to 12, inclusive, or supervise beginning teachers of algebra.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement examination authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of prealgebra and algebra in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based, and shall include all of the following components:

(A) Instruction in prealgebra and algebra that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant

to Section 60640 and the high school exit examination authorized pursuant to Section 60850.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Intervention techniques for pupils experiencing difficulty in prealgebra and algebra.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in prealgebra and algebra.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes a High School Algebra Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 8. Section 99225 of the Education Code is amended to read:

99225. The Regents of the University of California are requested to develop collaboratively with the Trustees of the California State University, the independent colleges and universities, and the county offices of education, the Elementary Mathematics Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,000 participants who either provide direct instruction in elementary mathematics to pupils in grades 4 to 6, inclusive, or supervise beginning teachers of elementary mathematics.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(C) Schools with a high number of beginning and noncredentialed teachers.

(D) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (C) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of elementary mathematics in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based, and shall include all of the following components:

(A) Instruction in elementary mathematics that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and the high school exit examination authorized pursuant to Section 60850.

(B) Instruction that will prepare teachers as mathematics specialists and to become teacher trainers at their schools, assuming more of the responsibility for mathematics instruction.

(C) Ongoing diagnostic techniques that inform teaching and assessment.

(D) Early and continuing intervention techniques for pupils experiencing difficulty in elementary mathematics.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely

distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course, and shall be supplemented, during the following school year, with no fewer than 40 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in elementary mathematics.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes an Algebra Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 9. Section 99225.5 of the Education Code is amended to read:

99225.5. In addition to providing the Legislature with quarterly enrollment and completion reports, the University of California and its partners in administering professional development institutes under this article shall annually contract for an independent evaluation of the professional development institutes authorized by Sections 406, 99220, 99221, 99222, 99224, and 99225. The results of this evaluation shall be reported, in writing, to the Legislature no later than January 1, 2002, and annually thereafter.

SEC. 10. The sum of one million dollars ($1,000,000) is hereby appropriated from the General Fund to the Los Angeles County Office of Education to implement Article 5.7 (commencing with Section 44309) of Chapter 2 of Part 25 of the Education Code.

CHAPTER 987

An act to amend Section 13602 of, and to add Section 13603 to, the Penal Code, relating to corrections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 30, 2000.]

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

SECTION 1. Section 13602 of the Penal Code is amended to read:

13602. (a) The Department of Corrections shall use the training academy at Galt. This academy shall be known as the Richard A. McGee Academy. The Department of the Youth Authority shall use the training center at Stockton. The training divisions, in using the funds, shall endeavor to minimize costs of administration so that a maximum amount of the funds will be used for providing training and support to correctional peace officers while being trained by the departments.

(b) Each new cadet who attends an academy after July 1, 2001, shall complete the course of training, pursuant to standards approved by CPOST before he or she may be assigned to a post or job as a peace officer. After July 1, 2001, every newly appointed first-line or second-line supervisor shall complete the course of training, pursuant to standards approved by CPOST for that position. Every effort shall be made to provide training prior to commencement of supervisorial duties. If this training is not completed within six months of appointment to that position, any first-line or second-line supervisor shall not perform supervisory duties until the training is completed. CPOST shall report to the Governor and to the appropriate policy and fiscal committees of the Legislature by September 1, 1999, concerning the training standards determined for line correctional peace officers and supervisors of the Department of Corrections and the Department of the Youth Authority. This report shall include, but not be limited to, a description of the standards for the curriculum of the respective academies and the length of time required to satisfactorily train officers for their duties.

It is the intent of this section that the report be included in the basis for a new budget change proposal for the administration to consider in the 2000–01 Budget Act to enhance department training operations.

SEC. 2. Section 13603 is added to the Penal Code, to read:

13603. (a) The Department of Corrections and the Department of the Youth Authority shall provide 16 weeks of training to each correctional peace officer cadet. This training shall be completed by the cadet prior to his or her assignment to a post or position as a correctional peace officer.

(b) The Department of Corrections and the Department of the Youth Authority shall provide a minimum of two weeks of training to each newly appointed first line supervisor.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order to prevent any disruption in the training schedule of correctional peace officer cadets, it is necessary that this act take effect immediately.

CHAPTER 988

An act to add Sections 75059 and 75059.1 to the Government Code, relating to the Judges' Retirement System.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 75059 is added to the Government Code, to read:

75059. (a) Upon the legal separation or dissolution of marriage of a retired member, the court shall include in a judgment or court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to paragraph (4) of subdivision (a) of Section 2610 of the Family Code, the retirement allowance payable to the member attributable to periods of service during the marriage shall be irrevocably divided into two separate and distinct payments in the names of the member and nonmember former spouse, respectively. Benefits under this section shall be based on the actuarial equivalent of the member's retirement allowance as of the effective date of the order dividing the benefit. The share of the actuarially reduced monthly allowance payable to the former spouse pursuant to that division shall be a lifetime benefit, and the former spouse shall have the right to designate a beneficiary for any unpaid allowance payable at the time of his or her death.

(c) Any retirement allowance not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(d) Any survivor benefits payable to any eligible surviving spouse of a retired member whose allowance was reduced under this section shall be based solely on the reduced allowance.

SEC. 2. Section 75059.1 is added to the Government Code, to read:

75059.1. (a) A former spouse of a judge retired or deceased as of January 1, 2001, shall be eligible for the benefits provided by this section if the community property interest in the system was divided by court

order pursuant to paragraph (4) of subdivision (a) of Section 2610 of the Family Code, the former spouse retained an interest in the system, and the parties did not divide the member's account pursuant to Section 75050. The monthly allowance payable pursuant to that division to the former spouse shall be a lifetime benefit and the former spouse shall have the right to designate a beneficiary for any unpaid allowance payable at the time of his or her death.

(b) The section shall apply retroactively to establish eligibility for a former spouse to the benefits provided by this section, but any payment made to the former spouse shall be prospective and shall commence no earlier than (1) the first of the month in which the application was received by the system in those cases where the member is deceased, or (2) the first of the month in which a valid court order is received in cases where the retired judge is still living.

(c) The board has no duty to locate or notify the members or former spouses who may be eligible to apply for the benefits under this section.

(d) The benefits provided by this section shall be applicable to persons otherwise eligible who notify the system in writing prior to January 1, 2002.

CHAPTER 989

An act to amend Sections 4451 and 4454 of, and to add Section 4459 to, the Government Code, relating to building standards, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 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) Under the California State Accessibility Standards, in the California Building Standards Code, detailed specifications have existed for tactile signage since 1982.

(b) These specifications were revised and went into effect April 1, 1994, to comply with the federal Americans with Disabilities Act (ADA) accessibility guidelines, and some of these specifications are more stringent than those contained in the ADA guidelines. Enforcement authorities should ensure that raised lettering and braille dots are properly spaced and sized to conform with the requirements of the California Building Standards Code.

(c) A vast majority of buildings fail to complete installation of braille tactile signage since they are often regarded as cosmetic features. Noncompliance with the California Building Standards Code results in sporadic and unpredictable use of braille tactile signage that renders the signage inconsistent and possibly unusable to blind and visually impaired consumers.

SEC. 2. Section 4451 of the Government Code is amended to read:

4451. (a) Except as otherwise provided in this section, this chapter shall be limited in its application to all buildings and facilities stated in Section 4450 intended for use by the public, with any reasonable availability to, or usage by, persons with disabilities, including all facilities used for education and instruction, including the University of California, the California State University, and the various community college districts, that are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state.

(b) When required by federal or state law, buildings, structures, and facilities, or portions thereof, that are leased, rented, contracted, sublet, or hired by any municipal, county, or state division of government, or special district shall be made accessible to, and usable by, persons with disabilities.

(c) Except as otherwise provided by law, buildings, structures, sidewalks, curbs, and related facilities subject to the provisions of this chapter or Part 5.5 (commencing with Section 19955) of Division 13 of the Health and Safety Code shall conform to the building standards published in the California Building Standards Code relating to access for persons with disabilities and the other regulations adopted pursuant to Section 4450 that are in effect on the date of an application for a building permit. With respect to buildings, structures, sidewalks, curbs, and related facilities not requiring a building permit, building standards published in the California Building Standards Code relating to access for persons with disabilities and other regulations adopted pursuant to Section 4450, and in effect at the time construction is commenced shall be applicable.

(d) Until building standards are published in the California Building Standards Code and other regulations are developed by the State Architect and adopted by the California Building Standards Commission pursuant to Section 4450, buildings, structures, sidewalks, curbs, and related facilities subject to the provisions of this chapter or Part 5.5 (commencing with Section 19955) of Division 13 of the Health and Safety Code shall meet or exceed the requirements of Title III of Subpart D of the federal Americans with Disabilities Act of 1990.

(e) This chapter shall apply to temporary or emergency construction as well as permanent buildings.

(f) Administrative authorities, as designated under Section 4453, may grant exceptions from the literal requirements of the building standards published in the California Building Standards Code relating to access for persons with disabilities, or the other regulations adopted pursuant to this section, or permit the use of other methods or materials, but only when it is clearly evident that equivalent facilitation and protection that meets or exceeds the requirements under federal law are thereby secured.

(g) The Department of General Services shall develop, as appropriate, regulations to ensure that braille, tactile, or visual signage for elevators, rooms, spaces, functions, and directional information is installed as required by Section 4450 and shall develop and implement an effective training program to ensure compliance with all disability access requirements.

SEC. 3. Section 4454 of the Government Code is amended to read:

4454. Where state funds are utilized for any building or facility subject to this chapter, or where funds of counties, municipalities, or other political subdivisions are utilized for the construction of elementary school, secondary school, or community college buildings and facilities subject to this chapter, no contract shall be awarded until the Department of General Services has issued written approval stating that the plans and specifications comply with the intent of this chapter.

In each case the application for approval shall be accompanied by the plans and full, complete, and accurate specifications, which shall comply in every respect with any and all requirements prescribed by the Department of General Services.

The application shall be accompanied by a filing fee in amounts as determined by the Department of General Services. All fees shall be deposited into the Access for Handicapped Account, which account is hereby renamed the Disability Access Account as of July 1, 2001, and established in the General Fund. Notwithstanding Section 13340, the account is continuously appropriated for expenditures for the use of the Department of General Services, in carrying out the department's responsibilities under this chapter. However, the expenditure of funds from the Disability Access Account for responsibilities prescribed in Section 4459 shall terminate on December 31, 2004.

The Department of General Services shall consult with the Department of Rehabilitation in identifying the requirements necessary to comply with this chapter.

The Department of General Services, Division of the State Architect, shall include the cost of carrying out the responsibilities identified in this chapter as part of the plan review costs in determining fees.

SEC. 4. Section 4459 is added to the Government Code, to read:

4459. (a) The State Architect shall develop amendments for building regulations and submit them to the California Building Standards Commission for adoption to ensure that no accessibility requirements of the California Building Standards Code shall be enhanced or diminished except as necessary for (1) retaining existing state regulations that provide greater accessibility and features, or (2) meeting federal minimum accessibility standards of the federal Americans with Disabilities Act of 1990 as adopted by the United States Department of Justice, the Uniform Federal Accessibility Standards, and the federal Architectural Barriers Act.

(b) The Department of General Services shall use fees deposited in the Disability Access Account established in Section 4454 for the purposes identified in this chapter. The department shall include the cost of carrying out the responsibilities identified in this chapter as part of the plan review costs in determining fees.

(c) Notwithstanding any other provision of law, the application and scope of accessibility regulations in the California Building Standards Code shall not be less than the application and scope of accessibility requirements of the federal Americans with Disabilities Act of 1990 as adopted by the United States Department of Justice, the Uniform Federal Accessibility Standards, and the federal Architectural Barriers Act.

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 990

An act to amend Section 2802 of the Labor Code, relating to employment.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 2802 of the Labor Code is amended to read:

2802. (a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct

consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

(c) For purposes of this section, the term ''necessary expenditures or losses'' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

SEC. 2. Nothing in this act is intended to establish the right of the Division of Labor Standards Enforcement to be awarded costs and attorney's fees.

CHAPTER 991

An act to amend Sections 33200 and 33213 of, to add Section 33200.1 to, and to repeal Section 33216 of the Public Resources Code, relating to the Santa Monica Mountains Conservancy.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 33200 of the Public Resources Code is amended to read:

33200. (a) The Santa Monica Mountains Conservancy is hereby established within the Resources Agency. The conservancy is composed of nine voting members and two ex officio members. The voting members are as follows:

(1) The Superintendent of the Santa Monica Mountains National Recreation Area, or his or her designee.

(2) A member representing the City of Los Angeles, appointed by the mayor with the approval of the city council.

(3) Three public members who shall be residents of either the County of Los Angeles or the County of Ventura, one of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly. At least one of the public members shall reside

within the San Fernando Valley statistical area, as defined in Section 11093 of the Government Code. The seat of a public member shall be deemed vacant if the member changes his or her residence to a county other than Los Angeles or Ventura County.

(4) An elected official who is a representative nominated by the city councils of those cities which have at least 75 percent of their areas within the zone who shall be appointed by the Board of Supervisors of the County of Los Angeles or a member appointed by the Board of Supervisors of the County of Los Angeles, or that member's designee.

(5) An elected official who is either a member of the City Council of the City of Thousand Oaks or a member of the Board of Supervisors of the County of Ventura and who shall be appointed by the Board of Supervisors of the County of Ventura, or the elected official's designee.

(6) The Secretary of the Resources Agency or an employee of the agency designated by the secretary.

(7) The Superintendent of the Angeles District of the Department of Parks and Recreation, or his or her designee.

(b) (1) The California Coastal Commission and the State Coastal Conservancy shall each appoint an ex officio member who shall be either a member or employee of their respective agency. The ex officio member appointed by the California Coastal Commission and the State Coastal Conservancy shall be nonvoting members, except that the ex officio member appointed by the State Coastal Conservancy may vote on any matter relating to a project undertaken within the coastal zone portion of the zone.

(2) On the 10th working day after certification pursuant to Chapter 6 (commencing with Section 30500) of Division 20 of any local coastal program, or any portion thereof, for any portion of the zone, the ex officio member appointed by the California Coastal Commission may vote on any matter relating to a project undertaken within the coastal zone portion of the zone and the ex officio member appointed by the State Coastal Conservancy may not vote on the matter.

(c) The chairperson and vice chairperson of the conservancy shall be selected by the voting members of the conservancy for a one-year term. A majority of the total authorized and appointed voting membership of the conservancy constitutes a quorum for the transaction of any business under this division.

(d) (1) The following members of the conservancy shall be compensated for attendance at regular meetings of the conservancy at the rate of one hundred dollars ($100) per day:

(A) The public members.

(B) The member appointed by the Board of Supervisors of the County of Los Angeles or that member's designee, unless the member or

designee is also a member of the board of supervisors, in which case no compensation shall be paid.

(C) The member appointed by the Board of Supervisors of the County of Ventura or that member's designee, unless the member or designee is also a member of a board of supervisors, in which case no compensation shall be paid.

(D) The members appointed by the State Coastal Conservancy and the California Coastal Commission if these members are not employees of their respective agency or are not full-time compensated elected officials.

(E) The appointed member representing the City of Los Angeles.

(2) All members of the conservancy shall be reimbursed for actual and necessary expenses, including travel expenses, incurred in the performance of their duties.

SEC. 2. Section 33200.1 is added to the Public Resources Code, to read:

33200.1. Three Members of the Senate, appointed by the Senate Committee on Rules, and three Members of the Assembly, appointed by the Speaker of the Assembly, shall meet with the conservancy on a regular basis and participate in its activities, to the extent that such participation is not incompatible with their respective positions as Members of the Legislature.

SEC. 3. Section 33213 of the Public Resources Code is amended to read:

33213. (a) The Santa Monica Mountains Conservancy Advisory Committee is hereby created. The advisory committee consists of 26 members, as follows:

(1) Fifteen representatives of local governments from jurisdictions including the Santa Monica Mountains, one of whom shall be appointed by the Mayor of the City of Los Angeles, one of whom shall be appointed by the Board of Supervisors of the County of Los Angeles, one of whom shall be appointed by the City Council of the City of Thousand Oaks, one of whom shall be appointed by the Board of Supervisors of the County of Ventura, one of whom shall be appointed by the City Council of the City of Agoura Hills, one of whom shall be appointed by the City Council of the City of Westlake Village, one of whom shall be appointed by the City Council of the City of Malibu, one of whom shall be appointed by the City Council of the City of Calabasas, one of whom shall be appointed by the City Council of Burbank, one of whom shall be appointed by the City Council of Glendale, one of whom shall be appointed by the City Council of La Canada-Flintridge, one of whom shall be appointed by the City Council of Pasadena, one of whom shall be appointed by the City Council of Sierra Madre, one of whom shall be appointed by the City Council of South Pasadena, and one of whom shall

be appointed by the Board of Supervisors of Los Angeles County to represent the unincorporated communities within the jurisdiction of the East Rim of the Valley Trail Corridor, after consultation with the Town Council of Altadena and the Crescenta Valley Town Council.

(2) Six public members, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(3) One representative of the Rancho Simi Recreation and Park District, to be appointed by the district board of directors.

(4) One representative of the Conejo Recreation and Park District, to be appointed by the district board of directors.

(5) One representative of the Pleasant Valley Recreation and Park District, to be appointed by the district board of directors.

(6) One representative of the City of Santa Clarita, to be appointed by the city council.

(7) One representative of the City of Moorpark, to be appointed by the city council.

(b) The appointing powers shall make every effort to ensure that the ethnic and racial composition of the advisory committee reflects the racial and ethnic composition of the population of the state.

(c) The advisory committee shall select from among its members a chairperson and a vice chairperson.

(d) The members of the advisory committee shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(e) The advisory committee has the following duties:

(1) Propose and review projects for conservancy action and report to the conservancy regarding the conformity of the projects with the plan.

(2) Review proposed amendments to the plan.

(3) Provide opportunities for public participation.

(f) Twelve members of the advisory committee shall constitute a quorum for the transaction of any business of the advisory committee.

SEC. 4. Section 33216 of the Public Resources Code is repealed.

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.

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CHAPTER 992

An act to add Section 596.7 to the Penal Code, relating to animals.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 596.7 is added to the Penal Code, to read:

596.7. (a) For purposes of this section, ''rodeo'' means a public performance featuring competition between persons, which includes four or more of the following events: bareback bronc riding, saddle bronc riding, bull riding, calf roping, steer wrestling, or team roping.

(b) The management of any professionally sanctioned or amateur rodeo that intends to perform in any city, county, or city and county shall ensure that there is a veterinarian licensed to practice in this state present at all times during the performances of the rodeo, or a veterinarian licensed to practice in the state who is on-call and able to arrive at the rodeo within one hour after a determination has been made that there is an injury which requires treatment to be provided by a veterinarian.

(c) (1) The attending or on-call veterinarian shall have complete access to the site of any event in the rodeo that uses animals.

(2) The attending or on-call veterinarian may, for good cause, declare any animal unfit for use in any rodeo event.

(d) (1) Any animal that is injured during the course of, or as a result of, any rodeo event shall receive immediate examination and appropriate treatment by the attending veterinarian or shall begin receiving examination and appropriate treatment by a veterinarian licensed to practice in this state within one hour of the determination of the injury requiring veterinary treatment.

(2) The attending or on-call veterinarian shall submit a brief written listing of any animal injury requiring veterinary treatment to the Veterinary Medical Board within 48 hours of the conclusion of the rodeo.

(3) The rodeo management shall ensure that there is a conveyance available at all times for the immediate and humane removal of any injured animal.

(e) The rodeo management shall ensure that no electric prod or similar device is used on any animal once the animal is in the holding chute, unless necessary to protect the participants and spectators of the rodeo.

(f) A violation of this section is an infraction and shall be punishable as follows:

(1) A fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000) for a first violation.

(2) A fine of not less than one thousand five hundred dollars ($1,500) and not more than five thousand dollars ($5,000) for a second or subsequent violation.

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 993

An act to amend Section 5080.23 of, and to add and repeal Section 5018.1 of, the Public Resources Code, relating to parks and recreation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 5080.23 of the Public Resources Code is amended to read:

5080.23. (a) Notwithstanding any other provision of this article, with respect to concession contracts entered into on and after October 1, 1994, if the director determines that it is in the best interests of the state, the director may, upon giving notice to the State Parks and Recreation Commission, in lieu of the process for awarding contracts otherwise prescribed in this article, award contracts authorizing occupancy of any portion of the state park system for a period of more than two years to the best responsible person or entity submitting a proposal for a concession contract.

(b) For any concession contract authorizing occupancy by the concessionaire for a period of more than two years of any portion of the state park system that is entered into pursuant to this section, the department shall prepare a request for proposal, which shall include the terms and conditions of the concession sufficient to enable a person or entity to submit a proposal for the operation of the concession on the

basis of the best benefit to the state. Proposals shall be completed only on the basis of the request for proposal.

(c) Any concession contract entered into pursuant to this section that is expected to involve a total investment or gross sales in excess of five hundred thousand dollars ($500,000) shall comply with the requirements for entry into contract that are set forth in Section 5080.20.

(d) For purposes of this section, ''best responsible person or entity submitting a proposal'' means the person or entity submitting a proposal, as determined by specific standards established by the department, that will operate the concession in the best interests of the state and the public.

SEC. 2. Section 5018.1 is added to the Public Resources Code, to read:

5018.1. (a) Notwithstanding any other provision of law, the Department of Finance may delegate to the department the right to exercise the same authority granted to the Division of the State Architect and the Real Estate Services Division in the Department of General Services to plan, design, construct, and administer contracts and professional services for legislatively approved capital outlay projects.

(b) Any right afforded to the department pursuant to subdivision (a) to exercise project planning, design, construction, and administration of contracts and professional services may be revoked, in whole or in part, by the Department of Finance at any time prior to January 1, 2005.

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

SEC. 3. 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 preserve the state parks in the best interests of the state and the public, it is necessary that this act take effect immediately.

CHAPTER 994

An act to amend Sections 21628 and 21630 of the Business and Professions Code, relating to secondhand goods.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 21628 of the Business and Professions Code is amended to read:

21628. Every secondhand dealer or coin dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of the property, on forms either approved or provided at actual cost by the Department of Justice, all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief of police or to the sheriff, in accordance with the provisions of Sections 21630 and 21633 and subdivision (j) of this section. The report shall be legible, prepared in English, completed where applicable, and include, but not be limited to, the following information:

(a) The name and current address of the intended seller or pledgor of the property.

(b) The identification of the intended seller or pledgor. The identification of the seller or pledgor of the property shall be verified by the person taking the information. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided that the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, is signed by the person, and bears a serial or other identifying number:

(1) A passport of the United States.

(2) A driver's license issued by any state, or Canada.

(3) An identification card issued by any state.

(4) An identification card issued by the United States.

(5) A passport from any other country in addition to another item of identification bearing an address.

(c) A complete and reasonably accurate description of serialized property, including, but not limited to, the following: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer's named brand, and model name or number. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(d) A complete and reasonably accurate description of nonserialized property, including, but not limited to, the following: size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions and other identifying marks or symbols. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(e) A certification by the intended seller or pledgor that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

(f) A certification by the intended seller or pledgor that to his or her knowledge and belief the information is true and complete.

(g) A legible fingerprint taken from the intended seller or pledgor, as prescribed by the Department of Justice. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

(h) When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledgor adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

(i) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit a duplicate of the transaction report prepared pursuant to this section to the local law enforcement agency where the gun show or event is conducted.

(j) (1) The Department of Justice shall, in consultation with appropriate local law enforcement agencies, develop clear and comprehensive descriptive categories denoting tangible personal property subject to the reporting requirements of this section. These categories shall be incorporated by secondhand dealers and coin dealers described in Section 21626 for purposes of the reporting requirements set forth herein. Any required report shall be transmitted by electronic means. The Department of Justice and local law enforcement agencies,

in consultation with representatives from the secondhand dealer and coin dealer businesses, shall develop a standard format to be used statewide to transmit this report electronically.

(2) Twelve months after the format and the categories described in paragraph (1) have been developed, each secondhand dealer and coin dealer shall electronically report using this format the information required by this section under these reporting categories. Until that time, each secondhand dealer and coin dealer may either continue to report this information using existing forms and procedures or may begin electronically reporting this information under the reporting categories and using the format described in paragraph (1) as soon as each has been developed.

(3) A coin dealer who engages in less than 10 transactions each week in which he or she has purchased, taken in trade, taken in pawn, accepted for sale or consignment, or accepted for auctioning tangible personal property, shall report the information required by this section under the reporting categories described in paragraph (1) on a form developed by the Attorney General that the coin dealer shall transmit each day by facsimile transmission or by mail to the chief of police or sheriff. A transaction shall consist of not more than one item. Nothing in this section shall prohibit up to 10 transactions with the same customer per week, provided that the cumulative total per week for all customers does not exceed 10 transactions. Until that form is developed, these coin dealers shall continue to report information required by this section using existing forms and procedures. If these transactions increase to 10 per week, the coin dealer shall electronically report using the format described in paragraph (1) the information required by this section beginning six months after his or her transactions exceed 10 per week or 12 months after the format described in paragraph (1) has been developed, whichever occurs later.

(4) For purposes of this subdivision, ''item'' shall mean any single physical article. However, with respect to a commonly accepted grouping of articles that are purchased as a set, including, but not limited to, a pair of earrings or place settings of china, silverware, or other tableware, ''item'' shall mean that commonly accepted grouping.

(5) Nothing in this subdivision shall be construed as excepting a secondhand dealer from the fingerprinting requirement of subdivision (g).

SEC. 2. Section 21630 of the Business and Professions Code is amended to read:

21630. If the transaction takes place within the territorial limits of an incorporated city, the report shall be submitted to the police chief executive of the city or his or her designee. If the transaction takes place

outside the territorial limits of an incorporated city, the report shall be submitted to the sheriff of the county or his or her designee.

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 995

An act to amend Section 4846.5 of the Business and Professions Code, relating to veterinary medicine, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 4846.5 of the Business and Professions Code is amended to read:

4846.5. (a) On or after January 1, 2002, except as provided in this section, the board shall issue renewal licenses only to those applicants that have completed a minimum of 36 hours of continuing education in the preceding two years.

(b) (1) Notwithstanding any other provision of law, continuing education hours shall be earned by attending courses relevant to veterinary medicine and sponsored or cosponsored by any of the following:

(A) American Veterinary Medical Association (AVMA) accredited veterinary medical colleges.

(B) Accredited colleges or universities offering programs relevant to veterinary medicine.

(C) The American Veterinary Medical Association.

(D) American Veterinary Medical Association recognized specialty or affiliated allied groups.

(E) American Veterinary Medical Association's affiliated state veterinary medical associations.

(F) Nonprofit annual conferences established in conjunction with state veterinary medical associations.

(G) Educational organizations affiliated with the American Veterinary Medical Association or its state affiliated veterinary medical associations.

(H) Local veterinary medical associations affiliated with the California Veterinary Medical Association.

(I) Federal, state, or local government agencies.

(J) Providers accredited by the Accreditation Council for Continuing Medical Education (ACCME) or approved by the American Medical Association (AMA), providers recognized by the American Dental Association Continuing Education Recognition Program (ADA CERP), and AMA or ADA affiliated state, local, and specialty organizations.

(2) Continuing education credits shall be granted to those veterinarians taking self-study courses, which may include, but are not limited to, reading journals, viewing of videotapes, or listening to audiotapes. The taking of these courses shall be limited to no more than six hours biennially.

(3) The board may approve other continuing veterinary medical education providers not specified in paragraph (1).

(A) The board has the authority to recognize national continuing education approval bodies for the purpose of approving continuing education providers not specified in paragraph (1).

(B) Applicants seeking continuing education provider approval shall have the option of applying to the board or to a board-recognized national approval body.

(4) For good cause, the board may adopt an order specifying, on a prospective basis, that a provider of continuing veterinary medical education authorized pursuant to paragraphs (1) or (2) is no longer an acceptable provider.

(5) Continuing education hours earned by attending courses sponsored or cosponsored by those entities listed in paragraph (1) between January 1, 2000, and the effective date of this act shall be credited toward a veterinarian's continuing education requirement under this section.

(c) Every person renewing his or her license issued pursuant to Section 4846.4 or any person applying for relicensure or for reinstatement of his or her license to active status, shall submit proof of compliance with this section to the board certifying that he or she is in compliance with this section. Any false statement submitted pursuant to this section shall be a violation subject to Section 4831.

(d) This section shall not apply to a veterinarian's first license renewal. This section shall apply only to second and subsequent license renewals granted on or after January 1, 2002.

(e) The board shall have the right to audit the records of all applicants to verify the completion of the continuing education requirement.

Applicants shall maintain records of completion of required continuing education coursework for a period of four years and shall make these records available to the board for auditing purposes upon request. If the board, during this audit, questions whether any course reported by the veterinarian satisfies the continuing education requirement, the veterinarian shall provide information to the board concerning the content of the course; the name of its sponsor and cosponsor, if any; and specify the specific curricula that was of benefit to the veterinarian.

(f) A veterinarian desiring an inactive license or to restore an inactive license under Section 701, shall submit an application on a form provided by the board. In order to restore an inactive license to active status, the veterinarian shall have completed a minimum of 36 hours of continuing education within the last two years preceding application. The inactive license status of a veterinarian shall not deprive the board of its authority to institute or continue a disciplinary action against a licensee.

(g) Knowing misrepresentation of compliance with the requirements of this article by a veterinarian constitutes unprofessional conduct and grounds for disciplinary action or for the issuance of a citation and the imposition of a civil penalty pursuant to Section 4883.

(h) The board, in its discretion, may exempt from the continuing education requirement, any veterinarian who for reasons of health, military service, or undue hardship, cannot meet those requirements. Applications for waivers shall be submitted on a form provided by the board.

(i) The administration of this section may be funded through professional license and continuing education provider fees. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

(j) For those continuing education providers not listed in paragraph (1) of subdivision (b), the board or its recognized national approval agent shall establish criteria by which a provider of continuing education shall be approved. The board shall initially review and approve these criteria and may review the criteria as needed. The board or its recognized agent shall monitor, maintain, and manage related records and data. The board shall have the authority to impose an application fee, not to exceed two hundred dollars ($200) biennially, for continuing education providers not listed in paragraph (1) of subdivision (b).

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CHAPTER 996

An act to amend Section 33126 of, and to add Sections 33126.1 and 33126.2 to, the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. It is the intent of the Legislature to make the school accountability report card a more effective tool for providing public information by achieving all of the following:

(a) Providing consistent definitions and format for reporting data.

(b) Providing that the school accountability report card becomes a meaningful tool to understand the rating of a school by the academic performance index pursuant to Article 2 (commencing with Section 52051) of Chapter 6.1 of Part 28 of the Education Code by including all of the components of measurement employed by the academic performance index, including subgroup comparisons as defined by the Public Schools Accountability Act Advisory Committee pursuant to Section 52052.5 of the Education Code.

(c) Providing that the school accountability report card includes comparative information that, when possible, enables a reader to compare a particular school to other schools in the same district and to schools in other districts in the state, to compare the district of a particular school to other school districts, and to compare a particular school or district to a statewide average for the same.

(d) Ease the burden on schools of collecting and reporting data.

(e) Standardize the definitions on the school accountability report card to be consistent with the definitions already in place or under development at the state level with definitions pursuant to the academic performance index superseding conflicting definitions.

(f) Protect the personalized descriptive aspect of the report card by providing space on the model report card and suggesting its use to encourage districts to continue to provide descriptive information.

SEC. 2. Section 33126 of the Education Code is amended to read:

33126. (a) The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) (A) Pupil achievement by grade level, as measured by the standardized testing and reporting programs pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(B) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period.

(C) After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, pupil achievement by grade level, as measured by the results of the statewide assessment.

(D) Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one-year dropout rate listed in the California Basic Education Data System or any successor data system for the schoolsite over the most recent three-year period, and the graduation rate, as defined by the State Board of Education, over the most recent three-year period when available pursuant to Section 52052.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System or any successor data system information for the most recent three-year period.

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, and any assignment of teachers outside their subject areas of competence for the most recent three-year period.

(6) Quality and currency of textbooks and other instructional materials, including whether textbooks and other materials meet state standards and have been adopted by the State Board of Education for kindergarten and grades 1 to 8, inclusive, and adopted by the governing boards of school districts for grades 9 to 12, inclusive, and the ratio of textbooks per pupil and the year the textbooks were adopted.

(7) The availability of qualified personnel to provide counseling and other pupil support services, including the ratio of academic counselors per pupil.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(17) The number of advanced placement courses offered, by subject.

(18) The Academic Performance Index, including the disaggregation of subgroups as set forth in Section 52052 and the decile rankings and a comparison of schools.

(19) Whether a school qualified for the Immediate Intervention Underperforming Schools Program pursuant to Section 52053 and whether the school applied for, and received a grant pursuant to, that program.

(20) Whether the school qualifies for the Governor's Performance Award Program.

(21) When available, the percentage of pupils, including the disaggregation of subgroups as set forth in Section 52052, completing grade 12 who successfully complete the high school exit examination, as set forth in Sections 60850 and 60851, as compared to the percentage of pupils in the district and statewide completing grade 12 who successfully complete the examination.

(22) Contact information pertaining to any organized opportunities for parental involvement.

(23) For secondary schools, the percentage of graduates who have passed course requirements for entrance to the University of California and the California State University pursuant to Section 51225.3 and the percentage of pupils enrolled in those courses, as reported by the California Basic Education Data System or any successor data system.

(24) Whether the school has a college admission test preparation course program.

(c) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report

cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

SEC. 3. Section 33126.1 is added to the Education Code, to read:

33126.1. (a) The State Department of Education shall develop and recommend for adoption by the State Board of Education a standardized template intended to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public.

(b) The standardized template shall include fields for the insertion of data and information by the State Department of Education and by local educational agencies. When the template for a school is completed, it should enable parents and guardians to compare how local schools compare to other schools within that district as well as other schools in the state.

(c) In conjunction with the development of the standardized template, the State Department of Education shall furnish standard definitions for school conditions included in the school accountability report card. The standard definitions shall comply with the following:

(1) Definitions shall be consistent with the definitions already in place or under the development at the state level pursuant to existing law.

(2) Definitions shall enable schools to furnish contextual or comparative information to assist the public in understanding the information in relation to the performance of other schools.

(3) Definitions shall specify the data for which the State Department of Education will be responsible for providing and the data and information for which the local educational agencies will be responsible.

(d) By December 1, 2000, the State Department of Education shall report to the State Board of Education on the school conditions for which it already has standard definitions in place or under development. The report shall include a survey of the conditions for which the State Department of Education has valid and reliable data at the state, district, or school level. The report shall provide a timetable for the inclusion of conditions for which standard definitions or valid and reliable data do not yet exist through the State Department of Education.

(e) By December 1, 2000, the Superintendent of Public Instruction shall recommend and the State Board of Education shall appoint 13 members to serve on a broad-based advisory committee of local administrators, educators, parents, and other knowledgeable parties to develop definitions for the school conditions for which standard definitions do not yet exist. The State Board of Education may designate

outside experts in performance measurements in support of activities of the advisory board.

(f) By January 1, 2001, the State Board of Education shall approve available definitions for inclusion in the template as well as a timetable for the further development of definitions and data collection procedures. By July 1, 2001, and each year thereafter, the State Board of Education shall adopt the template for the current year's school accountability report card. Definitions for all school conditions shall be included in the template by July 1, 2002.

(g) The State Department of Education shall annually post the completed and viewable template on the Internet. The template shall be designed to allow schools or districts to download the template from the Internet. The template shall further be designed to allow local educational agencies, including individual schools, to enter data into the school accountability report card electronically, individualize the report card, and further describe the data elements. The State Department of Education shall establish model guidelines and safeguards that may be used by school districts secured access only for those school officials authorized to make modifications.

(i) The State Department of Education shall maintain current Internet links with the web sites of local educational agencies to provide parents and the public with easy access to the school accountability report cards maintained on the Internet. In order to ensure the currency of these Internet links, local educational agencies that provide access to school accountability report cards through the Internet shall furnish current Uniform Resource Locators for their web sites to the State Department of Education.

(j) A school or school district that chooses not to utilize the standardized template adopted pursuant to this section shall report the data for its school accountability report card in a manner that is consistent with the definitions adopted pursuant to subdivision (c) of this section.

(k) The State Department of Education shall provide recommendations for changes to the California Basic Education Data System, or any successor data system, and other data collection mechanisms to ensure that the information will be preserved and available in the future.

(*l*) Local educational agencies shall make these school accountability report cards available through the Internet or through paper copies.

(m) The State Department of Education shall monitor the compliance of local educational agencies with the requirements to prepare and to distribute school accountability report cards.

SEC. 4. Section 33126.2 is added to the Education Code, to read:

33126.2. (a) The Secretary for Education, as part of the study conducted pursuant to Provision 2 of Item 0650-011-0001 of Section 2.00 of the Budget Act of 2000, shall review the data elements provided by school districts via their school accountability report cards to determine to what extent these data elements may be incorporated into the Academic Performance Index, as established by Section 52052. This review may include, but is not limited to, the number of computers per pupil, quality and capacity of technology in the classroom, postsecondary matriculation data, and disaggregation of required data elements by subgroups. The Superintendent of Public Instruction may also recommend additional data elements for inclusion in the Academic Performance Index. Data elements may be incorporated in the Academic Performance Index only after those elements have been determined by the State Board of Education to be valid and reliable for the purpose of measuring school performance, and only if their inclusion would not be likely to result in a valid claim against the state for reimbursement pursuant to Section 6 of Article XIII B of the California Constitution.

(b) The Superintendent of Public Instruction shall additionally review, and the State Board of Education shall consider, any empirical research data that becomes available concerning barriers to equal opportunities to succeed educationally for all California pupils, regardless of socioeconomic background. Upon obtaining this information, the board shall evaluate whether there is any need to revise the school accountability report card.

SEC. 5. The sum of three hundred thirty thousand dollars ($330,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation according to the following schedule:

(a) One hundred thousand dollars ($100,000) to support the activities of the advisory committee established pursuant to subdivision (e) of Section 33126.1 of the Education Code. Funds appropriated for the purposes of this subdivision that have not been allocated by June 30, 2001, shall be available for allocation and expenditure for the purposes of this subdivision in the 2001–02 fiscal year.

(b) Two hundred thirty thousand dollars ($230,000) for two personnel years and associated data processing costs to provide support services for the implementation of Sections 33126 and 33126.1 of the Education Code, including the monitoring of compliance of legal education agencies, the monitoring of the contract for the posting of standardized templates, technical assistance to local educational agencies, and the preparation of data files.

SEC. 6. The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make information available to parents as soon as possible regarding performance of public schools, it is necessary that this act take effect immediately.

CHAPTER 997

An act to amend Section 734.1 of, and to add Section 12938 to, the Insurance Code, relating to insurance.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 734.1 of the Insurance Code is amended to read:

734.1. (a) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of the examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that the company has 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(b) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall either adopt the report as filed or with modifications or corrections, or reject the report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling pursuant to subdivision (a).

(c) (1) Nothing contained in this article shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

(2) If the commissioner terminates or suspends an examination that includes an examination of claims practices, the commissioner shall within 10 days of the termination or suspension transmit a copy of the complete examination file to the State Bureau of Audits. The State

Auditor shall audit the file pursuant to Section 10527 of the Government Code to determine the propriety of the termination or suspension.

SEC. 2. Section 12938 is added to the Insurance Code, to read:

12938. Notwithstanding any other provision of law, the department shall make available for public inspection and publish on its website all of the information described in subdivisions (a) and (b). This information shall be maintained in a current, up-to-date condition. All identifying and privileged information regarding individual policyholders shall be redacted from documents available for public inspection and on the website.

(a) All fully executed stipulations, orders, decisions, settlements, or other forms of agreement resolving market conduct examinations, whether the examinations were finalized, terminated, or suspended, that pertain to unfair or deceptive practices in the business of insurance as defined in Section 790.03.

(b) (1) Every adopted report of an examination of unfair or deceptive practices in the business of insurance as defined in Section 790.03 that is adopted as filed, or as modified or corrected, by the commissioner pursuant to Section 734.1.

(2) The commissioner upon adopting the report shall by certified United States mail transmit a copy of the report to the examined insurer's designated agent for service of process. Within 10 business days after the transmittal, the examined insurer may submit comments to the commissioner relating to the adopted report. The comments shall be in a form and length as provided by regulation.

(3) Ten business days after the transmittal the commissioner shall publish on the department's website the adopted report and any comments submitted by the examined insurer unless a court of competent jurisdiction has stayed the publication of the report.

(c) This section may not be construed to require the disclosure of company workpapers or other company documents discovered during the course of an examination or any preliminary report of the examination, except as otherwise permitted by law.

CHAPTER 998

An act to amend Sections 69101, 69102, 69103, 69104, 69105, 69106, 69580, 69581, 69582, 69583, 69585, 69586, 69591, 69592, 69593, 69594, 69595, 69596, 69598, 69603, 69606, 69610, and 69613 of, and to repeal Section 69620 of, the Government Code, relating to courts.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 69101 of the Government Code is amended to read:

69101. The Court of Appeal for the First Appellate District consists of five divisions having four judges each, and shall hold its regular sessions at San Francisco.

SEC. 2. Section 69102 of the Government Code is amended to read:

69102. The Court of Appeal for the Second Appellate District consists of eight divisions having four judges each. One division shall hold its regular sessions in Ventura County, Santa Barbara County, or San Luis Obispo County, at the discretion of the judges of that division, and the other divisions shall hold their regular sessions at Los Angeles.

SEC. 3. Section 69103 of the Government Code is amended to read:

69103. The Court of Appeal for the Third Appellate District consists of one division having 11 judges and shall hold its regular sessions at Sacramento.

SEC. 4. Section 69104 of the Government Code is amended to read:

69104. The Court of Appeal for the Fourth Appellate District consists of three divisions. One division shall hold its regular sessions at San Diego and shall have 10 judges. One division shall hold its regular sessions in the San Bernardino/Riverside area and shall have seven judges. One division shall hold its regular sessions in Orange County and shall have eight judges.

SEC. 5. Section 69105 of the Government Code is amended to read:

69105. The Court of Appeal for the Fifth Appellate District consists of one division having 10 judges and shall hold its regular sessions at Fresno.

SEC. 6. Section 69106 of the Government Code is amended to read:

69106. The Court of Appeal for the Sixth Appellate District consists of one division having seven judges and shall hold its regular sessions at San Jose.

SEC. 7. Section 69580 of the Government Code is amended to read:

69580. In the County of Alameda there shall be 35 judges of the superior court.

SEC. 8. Section 69581 of the Government Code is amended to read:

69581. In the County of Butte there shall be six judges of the superior court.

SEC. 9. Section 69582 of the Government Code is amended to read:

69582. In the County of Contra Costa there are 19 judges of the superior court.

SEC. 10. Section 69583 of the Government Code is amended to read:

69583. In the County of Fresno there shall be 18 judges of the superior court.

SEC. 11. Section 69585 of the Government Code is amended to read:

69585. In the County of Kern there shall be 16 judges of the superior court.

SEC. 12. Section 69586 of the Government Code is amended to read:

69586. In the County of Los Angeles there are 239 judges of the superior court, any one or more of whom may hold court.

SEC. 13. Section 69591 of the Government Code is amended to read:

69591. In the County of Orange there are 62 judges of the superior court.

SEC. 14. Section 69592 of the Government Code is amended to read:

69592. In the County of Riverside there are 27 judges of the superior court.

SEC. 15. Section 69593 of the Government Code is amended to read:

69593. In the County of Sacramento there are 35 judges of the superior court.

SEC. 16. Section 69594 of the Government Code is amended to read:

69594. In the County of San Bernardino there are 33 judges of the superior court.

SEC. 17. Section 69595 of the Government Code is amended to read:

69595. In the County of San Diego there are 72 judges of the superior court.

SEC. 18. Section 69596 of the Government Code is amended to read:

69596. In the City and County of San Francisco there are 30 judges of the superior court, any one or more of whom may hold court.

SEC. 19. Section 69598 of the Government Code is amended to read:

69598. In the County of San Joaquin there are 14 judges of the superior court.

SEC. 20. Section 69603 of the Government Code is amended to read:

69603. In the County of Sonoma there shall be 10 judges of the superior court.

SEC. 21. Section 69606 of the Government Code is amended to read:

69606. In the County of Ventura there shall be 16 judges of the superior court.

SEC. 22. Section 69610 of the Government Code is amended to read:

69610. In the County of Yolo there are five judges of the superior court.

SEC. 23. Section 69613 of the Government Code is amended to read:

69613. In the County of San Luis Obispo there are six judges of the superior court.

SEC. 24. Section 69620 of the Government Code is repealed.

SEC. 25. 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 999

An act to amend Section 4128 of the Probate Code, relating to power of attorney.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 4128 of the Probate Code is amended to read:

4128. (a) Subject to subdivision (b), a printed form of a durable power of attorney that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall contain, in not less than 10-point boldface type or a reasonable equivalent thereof, the following warning statements:

Notice to Person Executing Durable Power of Attorney

A durable power of attorney is an important legal document. By signing the durable power of attorney, you are authorizing another person to act for you, the principal. Before you sign this durable power of attorney, you should know these important facts:

Your agent (attorney-in-fact) has no duty to act unless you and your agent agree otherwise in writing.

This document gives your agent the powers to manage, dispose of, sell, and convey your real and personal property, and to use your property as security if your agent borrows money on your behalf. This document does not give your agent the power to accept or receive any of your property, in trust or otherwise, as a gift, unless you specifically authorize the agent to accept or receive a gift.

Your agent will have the right to receive reasonable payment for services provided under this durable power of attorney unless you provide otherwise in this power of attorney.

The powers you give your agent will continue to exist for your entire lifetime, unless you state that the durable power of attorney will last for a shorter period of time or unless you otherwise terminate the durable power of attorney. The powers you give your agent in this durable power of attorney will continue to exist even if you can no longer make your own decisions respecting the management of your property.

You can amend or change this durable power of attorney only by executing a new durable power of attorney or by executing an amendment through the same formalities as an original. You have the right to revoke or terminate this durable power of attorney at any time, so long as you are competent.

This durable power of attorney must be dated and must be acknowledged before a notary public or signed by two witnesses. If it is signed by two witnesses, they must witness either (1) the signing of the power of attorney or (2) the principal's signing or acknowledgment of his or her signature. A durable power of attorney that may affect real property should be acknowledged before a notary public so that it may easily be recorded.

You should read this durable power of attorney carefully. When effective, this durable power of attorney will give your agent the right to deal with property that you now have or might acquire in the future. The durable power of attorney is important to you. If you do not understand the durable power of attorney, or any provision of it, then you should obtain the assistance of an attorney or other qualified person.

Notice to Person Accepting the Appointment as Attorney-in-Fact

By acting or agreeing to act as the agent (attorney-in-fact) under this power of attorney you assume the fiduciary and other legal responsibilities of an agent. These responsibilities include:

1. The legal duty to act solely in the interest of the principal and to avoid conflicts of interest.

2. The legal duty to keep the principal's property separate and distinct from any other property owned or controlled by you.

You may not transfer the principal's property to yourself without full and adequate consideration or accept a gift of the principal's property unless this power of attorney specifically authorizes you to transfer property to yourself or accept a gift of the principal's property. If you transfer the principal's property to yourself without specific authorization in the power of attorney, you may be prosecuted for fraud and/or embezzlement. If the principal is 65 years of age or older at the time that the property is transferred to you without authority, you may also be prosecuted for elder abuse under Penal Code Section 368. In addition to criminal prosecution, you may also be sued in civil court.

I have read the foregoing notice and I understand the legal and fiduciary duties that I assume by acting or agreeing to act as the agent (attorney-in-fact) under the terms of this power of attorney.

Date:

_____

(Signature of agent)

_____

(Print name of agent)

(b) Nothing in subdivision (a) invalidates any transaction in which a third person relied in good faith on the authority created by the durable power of attorney.

(c) This section does not apply to a statutory form power of attorney under Part 3 (commencing with Section 4400).

SEC. 2. The provisions of this bill shall not affect any legally sufficient power of attorney executed prior to January 1, 2001.

SEC. 3. The provisions of this bill shall not affect a durable power of attorney under Section 4128 of the Probate Code executed prior to March 1, 2001. Subsequent to March 1, 2001, all printed forms under Section 4128 of the Probate Code shall conform to the provisions of this bill.

CHAPTER 1000

An act to amend Sections 11734, 15051, 15053, 15054, 15055, 15061, 15062, and 15204 of, and to repeal Section 15052 of, the Food and

Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11734 of the Food and Agricultural Code is amended to read:

11734. The board of supervisors of any county may establish reasonable fees for the registration required under Section 11732. Payment of the fee shall be due by the date designated by the commissioner. However, registration fees for pest control businesses licensed pursuant to Section 11704 shall be that amount necessary to cover the costs of registration, but shall not exceed twenty-five dollars ($25) per year.

SEC. 1.5. Section 15051 of the Food and Agricultural Code is amended to read:

15051. (a) Each person shall obtain a license from the secretary for each location where commercial feed is manufactured, distributed, sold, or stored for later sale. Persons who do not have a permanent place of business, but who otherwise manufacture, sell, or store feed shall also obtain a license from the secretary.

(b) This section also shall apply to a person whenever the person's name and address appears on the label of commercial feed as guarantor.

(c) The following persons are exempt from this section:

(1) A person that makes only retail sales of commercial feed which bear the tag or other approved indication that the commercial feed is from a licensed manufacturer or guarantor who has assumed full tax responsibility for the tonnage tax due under this chapter.

(2) A person who manufactures commercial feed exclusively for feeding to his or her own animals.

SEC. 2. Section 15052 of the Food and Agricultural Code is repealed.

SEC. 3. Section 15053 of the Food and Agricultural Code is amended to read:

15053. Each application for a license shall be accompanied by a fee of one hundred dollars ($100) for each location for each two-year period beginning July 1 of each odd-numbered year, or portion of a two-year period beginning July 1 of each odd-numbered year.

SEC. 4. Section 15054 of the Food and Agricultural Code is amended to read:

15054. All licenses shall be renewed on July 1 of each odd-numbered year and shall be valid until June 30 of the next

odd-numbered year. Each application for renewal shall be accompanied by a fee of one hundred dollars ($100) for each location operated.

SEC. 5. Section 15055 of the Food and Agricultural Code is amended to read:

15055. If a license is not renewed within one calendar month following its expiration, a penalty of forty dollars ($40) shall be added to the fee.

SEC. 6. Section 15061 of the Food and Agricultural Code is amended to read:

15061. An inspection tonnage tax at the maximum rate of fifteen cents ($0.15) per ton of commercial feed sold, except whole grains, and whole hays when unmixed, shall be paid to the secretary by any person who distributes commercial feed to a consumer-buyer in this state. The distributor shall also pay an inspection tonnage tax for purchased commercial feed fed to his or her own animals.

The secretary may, based upon a finding and recommendation of the Feed Inspection Advisory Board, determine the specific rate necessary to provide the revenue needed to carry out the provisions of this chapter. The secretary and the Feed Inspection Advisory Board shall not exceed the maximum tonnage rate established by this section. Setting the tonnage tax rate shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 7. Section 15062 of the Food and Agricultural Code is amended to read:

15062. Every person subject to payment of the inspection tonnage tax shall make reports and payments in the manner prescribed by the director by regulation.

If payment is delinquent, a penalty of 15 percent of the amount past due shall be charged. For payments more than 12 months delinquent, an additional penalty of 1 percent per month of the amount past due shall be charged. The secretary shall set a penalty fee, as necessary to cover administrative costs, for any delinquency in making a report.

SEC. 8. Section 15204 of the Food and Agricultural Code is amended to read:

15204. (a) Each licensed structural pest control operator shall notify the commissioner prior to operating a structural pest control business in the county. The notification shall cover a calendar year, unless a shorter time is specified by the structural pest control licensee. A fee may also be required at the time of notification. The fee shall be set by the county board of supervisors, except that in no case shall the fee exceed the actual cost of processing the notification or ten dollars ($10), whichever is less. Payment of the fee shall be due by the date designated by the commissioner.

(b) Each notification shall be in a form prescribed by the director after consulting with the Structural Pest Control Board and commissioners and shall be limited to the structural pest control licensee's name and address (including each place of business in the county), telephone numbers, responsible persons, and the type of pest control to be conducted.

(c) Each structural pest control licensee who intends to conduct fumigation operations may be required to appear in person at the office of the commissioner to complete notification.

(d) If ordered by the commissioner, other structural pest control licensees shall appear in person at the office of the commissioner to complete notification.

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 1001

An act to amend Sections 1107 and 1370 of the Evidence Code, to amend Section 6222 of the Family Code, to amend Section 13701 of, and to amend the title heading of Title 11.5 of Part 1 of, the Penal Code, relating to domestic violence.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 1107 of the Evidence Code is amended to read:

1107. (a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on battered women's syndrome shall not be considered a new scientific technique whose reliability is unproven.

(c) For purposes of this section, ''abuse'' is defined in Section 6203 of the Family Code and ''domestic violence'' is defined in Section 6211 of the Family Code or acts defined in Section 242, subdivision (e) of Section 243, or Section 262, 273.5, 273.6, 422, or 653m of the Penal Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

(e) This section shall be known, and may be cited as, the Expert Witness Testimony on Battered Women's Experiences Section of the Evidence Code.

SEC. 2. Section 1370 of the Evidence Code is amended to read:

1370. (a) Evidence of a statement by a declarant is not made inadmissible by the hearsay rule if all of the following conditions are met:

(1) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

(2) The declarant is unavailable as a witness pursuant to Section 240.

(3) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of statements made more than five years before the filing of the current action or proceeding shall be inadmissible under this section.

(4) The statement was made under circumstances that would indicate its trustworthiness.

(5) The statement was made in writing, was electronically recorded, or made to a physician, nurse, paramedic, or to a law enforcement official.

(b) For purposes of paragraph (4) of subdivision (a), circumstances relevant to the issue of trustworthiness include, but are not limited to, the following:

(1) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

(2) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

(3) Whether the statement is corroborated by evidence other than statements that are admissible only pursuant to this section.

(c) A statement is admissible pursuant to this section only if the proponent of the statement makes known to the adverse party the intention to offer the statement and the particulars of the statement

sufficiently in advance of the proceedings in order to provide the adverse party with a fair opportunity to prepare to meet the statement.

SEC. 3. Section 6222 of the Family Code is amended to read:

6222. (a) There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division when the request for the other order is necessary to obtain or give effect to a protective order.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

SEC. 4. The heading of Title 11.5 of Part 1 of the Penal Code is amended to read:

TITLE 11.5. CRIMINAL THREATS

SEC. 5. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part

1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or by a court of any other state, a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

(1) Felony arrests.

(2) Misdemeanor arrests.

(3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, ''For further information about a shelter you may contact ____.''

(C) A statement that, ''For information about other services in the community, where available, you may contact ____.''

(D) A statement that, ''For information about the California victims' compensation program, you may contact 1-800-777-9229.''

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a ''Victims of Domestic Violence'' card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

CHAPTER 1002

An act to amend Sections 11126, 20300, 20392, 21404, 21490, 21546, 21547, 21548, 21620, 21621, 21622, 21623, 21623.5, 21757, 22825.1, 22825.17, 22827.5, 22871, and 77590 of, to amend and renumber Section 20486 of, to repeal Sections 21549, 22754.3, 22790.1, 22810.2, 22810.5, 22816.3, 22825.16, 22825.8, and 22840.1 of, and to repeal and add Section 20678 to, the Government Code, and to amend Item 9650-001-0001 of the Budget Act of 2000, relating to public employee retirement and health benefit programs, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11126 of the Government Code is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, ''employee'' does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, ''employee'' includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, ''lease'' includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with

Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby

abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, ''litigation'' includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider

disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(6) Prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article shall not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed

sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

SEC. 2. Section 20300 of the Government Code is amended to read:

20300. The following persons are excluded from membership in this system:

(a) Inmates of state or public agency institutions who are allowed compensation for the service they are able to perform.

(b) Independent contractors who are not employees.

(c) Persons employed as student assistants in the state colleges and persons employed as student aides in the special schools of the State Department of Education and in the public schools of the state.

(d) Persons employed as teacher-assistants pursuant to Section 44926 of the Education Code.

(e) Participants, other than staff officers and employees, in the California Conservation Corps.

(f) Persons employed as participants in a program of, and whose wages are paid in whole or in part by federal funds in accordance with, Section 1501 et seq. of Title 29 of the United States Code. This subdivision does not apply with respect to persons employed in job classes that provide eligibility for patrol or safety membership or to the career staff employees of an employer.

(g) All persons who are members in any teachers' retirement system, as to the service in which they are members of any teachers' retirement system.

(h) Except as otherwise provided in this part, persons rendering professional legal services to a city, other than the person holding the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney.

(i) A person serving the university as a teacher in university extension, whose compensation for that service is established on the basis of class enrollment either actual or estimated, with respect to that service.

(j) A person serving a California State University as a teacher in extension service, whose compensation for that service is established on the basis of class enrollment either actual or estimated, with respect to that service.

(k) A teacher or academic employee of the university or any California State University who is otherwise fully employed and who

serves as a teacher or in an academic capacity in any summer session or intersession, for which he or she receives compensation specifically attributable to that service in summer session or intersession, with respect to that service.

(*l*) A person who is employed under the Senate Fellows, the Assembly Fellows, or the Executive Fellows programs.

SEC. 3. Section 20392 of the Government Code is amended to read:

20392. ''State peace officer/firefighter member'' also includes officers and employees with the following class titles of:

Class Code	Classification
6875	Air Operations Officer I
1056	Air Operations Officer II
1053	Air Operations Officer III
6877	Air Operations Officer I (Maintenance)
6882	Air Operations Officer II (Maintenance)
1050	Air Operations Officer III (Maintenance)
8997	Arson and Bomb Investigator
9694	Board Coordinating Parole Agent, Youthful Offender Parole Board
9904	Correctional Counselor I
9903	Correctional Counselor II
9662	Correctional Officer
9911	Case Work Specialist, Youth Authority
9013	Deputy State Fire Marshal III (Specialist)
9086	Deputy State Fire Marshal
9010	Deputy State Fire Marshal III (Supervisor)
1077	Fire Apparatus Engineer
1095	Fire Captain
1072	Fire Control Aid
8979	Firefighter
1083	Firefighter I
1082	Firefighter II
9001	Firefighter (Correctional Institution)
8990	Firefighter/Security Officer
1047	Fire Prevention Officer I
1049	Fire Prevention Officer II
9090	Fire Service Training Specialist III
8418	Fish and Game Patrol, Lieutenant
8421	Fish and Game Warden, Department of Fish and Game

9039	Senior Food and Drug Investigator
9028	Food and Drug Program Specialist
9007	Food Technology Specialist
1060	Forestry Aid
1046	Forestry Pilot (Helicopter)
9579	Group Supervisor/Youth Correctional Officer
9578	Group Supervisor Trainee
6387	Heavy Fire Equipment Operator
1937	Hospital Peace Officer I
8416	Lieutenant Fish and Game Patrol Boat
0992	Lifeguard
8217	Medical Technical Assistant, Correctional Facility
1992	Museum Security Officer I
9701	Parole Agent I, Youth Authority
9765	Parole Agent I, Adult Parole
9696	Parole Agent II, Youth Authority (Specialist)
9763	Parole Agent II, Adult Parole (Supervisor)
9762	Patrol Agent II, Adult Parole (Specialist)
8215	Senior Medical Technical Assistant
8359	Sergeant, California State Police
8980	State Fire Marshal Trainee
9723	State Forest Ranger I (Nonsupervisory)
9724	State Forest Ranger II (Nonsupervisory)
0983	State Park Ranger I
8464	State Police Officer
8358	State Security Officer
8989	Captain Firefighter/Security Officer
8410	Warden–Pilot Department of Fish and Game
9581	Youth Counselor/Youth Correctional Counselor

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

SEC. 4. Section 20486 of the Government Code, as added by Chapter 502 of the Statutes of 1996, is amended and renumbered to read:

20487. Notwithstanding any other provision of law, no contracting agency or public agency that becomes the subject of a case under the bankruptcy provisions of Chapter 9 (commencing with Section 901) of Title 11 of the United States Code shall reject any contract or agreement between that agency and the board pursuant to Section 365 of Title 11 of the United States Code or any similar provision of law; nor shall the agency, without the prior written consent of the board, assume or assign any contract or agreement between that agency and the board pursuant to Section 365 of Title 11 of the United States Code or any similar provision of law.

SEC. 5. Section 20678 of the Government Code, as amended by Senate Bill 528 of the 1999–2000 Regular Session, is repealed.

SEC. 5.5. Section 20678 is added to the Government Code, to read:

20678. (a) For each local safety member subject to Section 21362, 21362.2, or 21363.1, by reason of the amendment of his or her employer's contract, or on the later date of entrance into this system, the normal rate of contribution shall be 9 percent of the compensation paid to those members. For those members whose service is included in the federal system, the normal rate of contribution shall be 9 percent of the compensation in excess of one hundred thirty-three dollars and thirty-three cents ($133.33) per month paid to those members.

(b) The normal rate of contribution for local safety members subject to Section 21363 shall be 8 percent of the compensation paid to those members. For those members whose service is included in the federal system, the normal rate of contribution shall be 8 percent of the compensation in excess of two hundred thirty-eight dollars ($238) per month paid to those members.

(c) Notwithstanding subdivision (b), the normal rate of contribution for local safety members of the City of Sacramento subject to Section 21363 shall be 9 percent of the compensation paid to those members.

(d) No adjustment shall be included in rates adopted under this section as the result of amendments hereto, changing the time at which members may retire or the benefits members will receive, because of time during which members have contributed at different rates prior to the adoption.

(e) This section shall be retroactive to January 1, 2000.

SEC. 6. Section 21404 of the Government Code is amended to read:

21404. Upon retirement for disability, a local miscellaneous member who is not subject to Section 21427 and who has attained the minimum age at which he or she may retire for service without an actuarial discount because of age, shall receive his or her service retirement allowance.

SEC. 7. Section 21490 of the Government Code is amended to read:

21490. (a) Except as provided in subdivision (b), a member may at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.

(b) (1) No designation may be made in derogation of the community property share of any nonmember spouse when any benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for division pursuant to Section 2610 of the Family Code.

(2) No designation may be made by an unmarried member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death if that designation is in derogation of the rights of the member's unmarried, dependent children who are under the age of 18 years at the time of the member's death.

(c) The designation, subject to conditions imposed by board rule, may be by class, in which case the members of the class at the time of the member's death shall be entitled as beneficiaries. The designation shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of any person designated as beneficiary, and payment made by this system in reliance on any determination made in good faith, notwithstanding that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of this system for further liability for the benefit.

SEC. 8. Section 21546 of the Government Code is amended to read:

21546. (a) Upon the death of a member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death, and who is eligible to retire and in circumstances in which the basic death benefit is payable other than solely that of membership in a county retirement system, or a retirement system maintained by the university, a monthly allowance shall be payable as follows:

(1) To the member's surviving spouse as long as the spouse lives.

(2) To the children under the age of 18 years collectively if there is no surviving spouse or if the surviving spouse dies before all children of the deceased member attain the age of 18 years, until every child dies or attains the age of 18 years. No child shall receive any allowance after marrying or attaining the age of 18 years.

(b) The monthly allowance under this section shall be equal to one-half of, and derived from the same source as, the unmodified retirement allowance the member would have been entitled to receive if

he or she had retired for service on the date of death. If, however, the member made a specific beneficiary designation under Section 21490, the monthly allowance shall be equal to one-half of that portion of the member's unmodified retirement allowance that would have been derived from the nonmember spouse's community property interest in the member's contributions and service credit.

(c) If a member does not have a surviving spouse nor any children under the age of 18 years at the time of death, no allowance shall be payable under this section.

(d) No allowance shall be payable under this section if a special death benefit is payable.

(e) (1) The allowance provided by this section shall be paid in lieu of the basic death benefit but a surviving spouse qualifying for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance.

(2) The allowance provided by this section shall be paid in lieu of the basic death benefit but the guardian of the minor child or children qualifying for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance. If an election of the basic death benefit is made, the basic death benefit shall be paid to all the member's surviving children, regardless of age or marital status, in equal shares.

(f) If the total of the payments made pursuant to this section are less than the basic death benefit that was otherwise payable on account of the member's death, the amount of the basic death benefit less any payments made pursuant to this section shall be paid in a lump sum to the surviving children of the member, share and share alike, or if there are no children, to the estate of the person last entitled to the allowance.

(g) The board shall compute the amount by which benefits paid pursuant to this section exceed the benefits that would otherwise be payable and shall charge any excess against the contributions of the state so that there shall be no increase in contributions of members by reason of benefits paid pursuant to this section.

(h) As used in this section, ''a surviving spouse'' means a spouse who was either married to the member for at least one year prior to the member's death, or was married to the member prior to the occurrence of the injury or the onset of the illness that resulted in death, and ''child'' includes a posthumously born child of the member.

(i) On and after April 1, 1972, this section shall apply to all contracting agencies and to the employees of those agencies with respect to deaths occurring after April 1, 1972, whether or not the agencies have previously elected to be subject to this section.

SEC. 9. Section 21547 of the Government Code is amended to read:

21547. (a) Notwithstanding any other provision of this article requiring attainment of the minimum age for voluntary service retirement to the member in his or her last employment preceding death, upon the death of a state member on or after January 1, 1993, who is credited with 20 years or more of state service, the surviving spouse, or eligible children if there is no surviving 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 the member had retired for service at minimum retirement age on the date of death and had elected optional settlement 2 and Section 21459.

(2) If the member made a specific beneficiary designation under Section 21490, the monthly allowance shall be based only on that portion of the amount the member would have received described in paragraph (1) that would have been derived from the nonmember spouse's community property interest in the member's contributions and service credit.

(3) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, to the surviving children, under the age of 18 years, collectively, an amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had retired for service at minimum retirement age on the date of death. No child shall receive any allowance after marrying or attaining the age of 18 years. As used in this paragraph, ''surviving children'' includes a posthumously born child or children of the member.

(b) This section shall only apply to members employed in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section, members who are excluded from the definition of state employees in subdivision (c) of Section 3513, and members employed by the executive branch of government who are not members of the civil service.

(c) For purposes of this section, ''state service'' means service rendered as a state employee, as defined in Section 19815. This section shall not apply to any contracting agency nor to the employees of any contracting agency.

SEC. 10. Section 21548 of the Government Code is amended to read:

21548. (a) The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to the member

in his or her last employment preceding death, and who is eligible to receive an allowance pursuant to Section 21546, shall instead receive an allowance that is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459.

(b) The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to the member in his or her last employment preceding death, and who is eligible to receive a special death benefit in lieu of an allowance under Section 21546, may elect to instead receive an allowance that is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459.

(c) If the member made a specific beneficiary designation under Section 21490, the allowance under this section shall be based only on that portion of the amount the member would have received described in subdivision (a) or (b) that would have been derived from the nonmember spouse's community property interest in the member's contributions and service credit.

(d) The allowance provided by this section shall be payable as long as the surviving spouse lives. Upon the death of the surviving spouse, the benefit shall be continued to minor children, as defined in Section 6500 of the Family Code, or a lump sum shall be paid as provided under circumstances specified in Section 21546 or in Sections 21541 and 21543, as the case may be.

(e) The allowance provided by this section shall be paid in lieu of the basic death benefit, but the surviving spouse qualifying for the allowance may elect before the first payment on account of it to receive the basic death benefit in lieu of the allowance.

(f) This section shall apply with respect to state members whose death occurs on and after July 1, 1976.

(g) All references in this code to Section 21546 shall be deemed to include this section in the alternative.

(h) This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among the employees is not required, or, in the case of contracts made after January 1, 1985, by express provision in the contract making the contracting agency subject to this section.

SEC. 11. Section 21549 of the Government Code is repealed.

SEC. 12. Section 21620 of the Government Code is amended to read:

21620. (a) Upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her beneficiary as he or she shall nominate by written designation duly executed and filed with the board, the sum of five hundred dollars ($500), to be provided from contributions by the state or contracting agency, as the case may be.

(b) This section shall apply to all contracting agencies and to the employees of those agencies.

SEC. 13. Section 21621 of the Government Code is amended to read:

21621. If the beneficiary of a member retired under this system is entitled to receive a comparable lump-sum death benefit from any other retirement system supported, in whole or in part, by public funds in which he or she was a member in employment subsequent to his or her last employment in which he or she was a member of this system, no payment shall be made under Section 21620, 21622, or 21623 providing for payment of a lump-sum death benefit to a member's designated beneficiary.

SEC. 14. Section 21622 of the Government Code is amended to read:

21622. (a) In lieu of benefits provided by Section 21620, upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary who he or she shall nominate by written designation duly executed and filed with the board, the sum of six hundred dollars ($600), to be provided from contributions by the state.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the public agency's contract.

(d) This section shall apply to members employed by a school employer.

(e) This section shall not apply to any contracting agency, except for those contracting agencies that are school employers and those school districts or community college districts, as defined in subdivision (i) of

Section 20057, 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 an election among the employees is not required, or, in the case of contracts made after January 1, 1981, by express provision in the contract making the contracting agency subject to this section.

SEC. 14.5. Section 21622 of the Government Code is amended to read:

21622. (a) In lieu of benefits provided by Section 21620, upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of six hundred dollars ($600), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and, (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the contracting agency's contract.

(d) This section shall not apply to any contracting agency, except for those contracting agencies that are school employers and those school districts or community college districts, as defined in subdivision (i) of Section 20057, 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 an election among the employees is not required, or, in the case of contracts made after January 1, 1981, by express provision in the contract making the contracting agency subject to this section.

SEC. 15. Section 21623 of the Government Code is amended to read:

21623. (a) In lieu of benefits provided by Section 21620 or 21622, upon the death of any retired state member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary who he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined

on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to any school employer, school member, contracting agency, or local member.

SEC. 15.5. Section 21623 of the Government Code is amended to read:

21623. (a) In lieu of benefits provided by Section 21620 or 21622, upon the death of any retired state or school member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall apply to a school employer and a retired school member whose death after retirement occurs on or after January 1, 2001. This section shall not apply to any contracting agency or local member, except those contracting agencies that are school employers and those school districts or community college districts as defined in subdivision (i) of Section 20057.

SEC. 16. Section 21623.5 of the Government Code is amended to read:

21623.5. (a) In lieu of benefits provided by Sections 21620 and 21622, upon the death of any local or school member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary who he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), three thousand dollars ($3,000), four thousand dollars ($4,000), or five thousand dollars ($5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the

aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to a contracting agency or school employer unless and until the agency or school employer elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except an election among the employees is not required or in the case of contracts made on or after January 1, 1999, except by express provision in the contract making the contracting agency or school employer subject to this section.

SEC. 16.5. Section 21623.5 of the Government Code is amended to read:

21623.5. (a) In lieu of benefits provided by Sections 21620 and 21622 upon the death of any local member, after retirement and while receiving a retirement allowance from this system, there shall be paid to the beneficiary whom he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), three thousand dollars ($3,000), four thousand dollars ($4,000), or five thousand dollars ($5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

(d) This section shall not apply to a 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 an election among the employees is not required or in the case of contracts made on or after January 1, 1999, except by express provision in the contract making the contracting agency subject to this section.

SEC. 17. Section 21757 of the Government Code is amended to read:

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries payable pursuant to Part 3 (commencing with Section 20000) would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of those benefits, including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any

combinations thereof, in order to maximize benefits within the limits of Section 415.

(b) The board shall establish a program of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Part 3 (commencing with Section 20000). The benefits provided by that program may consist of deferred compensation, cash payments, health benefits, or supplemental disability benefits, as shall be determined by the board to give effect to the purpose of this part. The factors the board may take into consideration in making its determination shall include, but not be limited to, the following: legal constraints, administrative feasibility, and cost-effectiveness. The board may periodically modify the replacement benefits program and may add or eliminate any type of replacement benefits, as necessary, to carry out the purpose of this part. The administrative costs of the replacement benefits program shall be satisfied out of funds credited to the accounts of the participant members, and shall not be paid from the retirement fund or the retirement trust fund of a participating agency.

(c) The application of Section 415 to benefits provided under Part 3 (commencing with Section 20000) and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit program result in increased benefit costs to an employer, member, or annuitant.

SEC. 18. Section 22754.3 of the Government Code is repealed.

SEC. 19. Section 22790.1 of the Government Code is repealed.

SEC. 20. Section 22810.2 of the Government Code is repealed.

SEC. 21. Section 22810.5 of the Government Code is repealed.

SEC. 22. Section 22816.3 of the Government Code is repealed.

SEC. 23. Section 22825.1 of the Government Code is amended to read:

22825.1. (a) (1) Notwithstanding any other provision of this article, the employer's contribution, with respect to each state officer and employee or an annuitant who was in the employment or office including an academic position with a campus of the California State University or is a survivor of that person, shall be adjusted by the Legislature in the annual Budget Act. Annual adjustments of the dollar amounts therein shall be based upon the principle that the employer's contribution for each employee or annuitant shall be an amount equal to 100 percent of the weighted average of the health benefits plan premiums for employees or annuitants enrolled for self alone plus 90 percent of the weighted average of the additional premiums required for enrollment of family members in the four health benefits plans which have the largest

number of enrollments during the fiscal year to which the formula applied.

(2) The employer's contribution under this section for each employee shall commence on the effective date of his or her enrollment.

(3) The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 24. Section 22825.16 of the Government Code is repealed.

SEC. 25. Section 22825.17 of the Government Code is amended to read:

22825.17. A health benefit plan offered by the California Association of Highway Patrolmen pursuant to Section 22790 may rebate funds to participants enrolled in the employee organization's sponsored basic and supplement to Medicare plans in order to ensure that participant out-of-pocket costs remain at a reasonable and competitive level as determined by the Board of Trustees of the California Association of Highway Patrolmen Health Benefits Trust. The payments shall be made from the special reserves of the health benefits trust fund for that health benefit plan. The amount of funds shall be limited to that portion of special reserves that is in excess of the amount necessary to fund the risk up to the reinsurance attachment level. Administrative costs incurred by the state shall be reimbursed by the health benefits trust fund for that health benefit plan.

This section shall become operative on July 1, 1992.

SEC. 26. Section 22825.8 of the Government Code is repealed.

SEC. 27. Section 22827.5 of the Government Code is amended to read:

22827.5. All moneys received pursuant to Section 22810.1 shall be deposited in the Public Employees' Contingency Reserve Fund. The board may transfer the complementary annuitant premiums into the Public Employees' Retirement Fund. The moneys in the fund are, notwithstanding Section 13340, continuously appropriated to the board, without regard to fiscal years, for payment of the complementary annuitant premiums and administrative expenses.

SEC. 28. Section 22840.1 of the Government Code is repealed.

SEC. 29. Section 22871 of the Government Code is amended to read:

22871. Notwithstanding any other provision of law, a domestic partner shall be included in the definition of a family member for purposes of Sections 22777, 22778, subdivision (a) of Section 22791, Sections 22811, 22811.5, 22812, 22813, 22815, subdivision (c) of Section 22816, Sections 22817, 22819, 22823, subdivision (a) of Section 22825, subdivision (a) of Section 22825.1, Section 22825.7, paragraph (1) of subdivision (b) of Section 22840.2, subdivision (f) of Section 22840.2, subdivision (b) of Section 22856, and Section 22859.

SEC. 30. Section 75590 of the Government Code is amended to read:

75590. (a) A surviving spouse of a judge who was eligible to retire pursuant to subdivision (a) of Section 75522 shall, within 90 days after the judge's death, elect to receive either of the following:

(1) A monthly retirement allowance equal to one-half of the judge's benefit factor computed as stated in subdivision (d) of Section 75522 as of the date of death, multiplied by the judge's final compensation multiplied by the number of years of service credit. This allowance shall be adjusted for changes in the cost of living as provided in Section 75523.

(2) The judge's monetary credits determined pursuant to Section 75520, including the credits added under subdivision (b) of that section computed to the last day of the month preceding the date of distribution.

(b) A surviving spouse of a retired judge who elected to receive a monthly allowance under subdivision (d) of Section 75522 or who was retired for disability and receiving an allowance under Section 75560.4 shall receive a monthly allowance equal to 50 percent of the deceased judge's last monthly retirement allowance. This allowance shall be adjusted for changes in the cost of living as provided in Section 75523.

(c) (1) Notwithstanding any other provision of this article to the contrary, the surviving spouse of a judge who (A) died in office, (B) had attained the minimum age for service retirement applicable to the judge preceding his or her death, with a minimum of 20 years of service, and (C) was eligible to receive an allowance pursuant to Section 75522, shall receive an allowance that is equal to the amount that the judge would have received if the judge had been retired from service on the date of death and had elected optional settlement 2 specified in subdivision (b) of Section 75571.

(2) A surviving spouse receiving an allowance pursuant to this subdivision shall have no other claim to benefits with respect to the Judges' Retirement Fund or with respect to any other provision of the Judges' Retirement System II Law.

(3) The benefits provided by this subdivision are only payable to the surviving spouse of a judge who elects to come within this subdivision. That election may be made at any time while the judge is in office and, once made, the election is irrevocable.

SEC. 31. Item 9650-001-0001 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000) is amended to read:

9650-001-0001—For support of Health and Dental Benefits for Annuitants. For the state's contribution for the cost of a health benefits plan and dental care premiums, for annuitants and other employees, in accordance with Sections 22825.7, 22828, 22829, and 22952 of the Government Code, which cost is not chargeable to any other appropriation 410,232,000

Schedule:

(a) Health benefit premiums 364,356,000

(b) Dental care premiums 45,876,000

Provisions:

1. The maximum transfer amounts specified in subdivision (b) of Section 26.00 of this act do not apply to this item.
2. Notwithstanding Section 22819 of the Government Code or any other provision of law, annuitants and their family members who were employed by the California State University, and who become eligible for Part A and Part B of Medicare during the 2000–01 fiscal year, shall not beenrolled in a basic health benefits plan during the 2000–01 fiscal year. If the annuitant or family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a supplement to the Medicare plan. This provision does not apply to employees and family members who are specifically excluded from enrollment in a supplement to the Medicare plan by federal law or regulation.
3. The maximum monthly contribution for an annuitant's health benefits plan shall be $201 for a single enrollee, $382 for an enrollee and one dependent, and $488 for an enrollee and two or more dependents.

SEC. 32. Sections 5 and 5.5 of this bill shall become operative only if Senate Bill 528 is enacted and becomes operative on or before January 1, 2001.

SEC. 33. Section 14.5 of this bill incorporates amendments to Section 21622 of the Government Code proposed by both this bill and AB 50. 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 21622 of the Government Code, and (3) this bill is enacted after AB 50, in which case Section 14 of this bill shall not become operative.

SEC. 34. Section 15.5 of this bill incorporates amendments to Section 21623 of the Government Code proposed by both this bill and AB 50. 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 21623 of the Government Code, and (3) this bill is enacted after AB 50, in which case Section 15 of this bill shall not become operative.

SEC. 35. Section 16.5 of this bill incorporates amendments to Section 21623.5 of the Government Code proposed by both this bill and AB 50. 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 21623.5 of the Government Code, and (3) this bill is enacted after AB 50, in which case Section 16 of this bill shall not become operative.

CHAPTER 1003

An act to amend Sections 2924f and 3440.5 of the Civil Code, to amend Sections 1201, 2210, 2502, 9102, 9104, 9205, 9210, 9307, 9311, 9317, 9319, 9323, 9325, 9331, 9336, 9407, 9408, 9502, 9505, 9509, 9513, 9519, 9524, 9525, 9608, 9611, 9613, 9615, 9625, 9626, 9702, and 9705 of, to amend and renumber Section 9708 of, to amend, renumber, and add Section 9707 of, and to repeal and add Sections 9403, 9404, 9405, 9406, and 9409 of, the Commercial Code, and to amend Sections 12183 and 12194 of, and to add Section 27291 to, the Government Code, relating to commercial law.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, ''property'' means real property or a leasehold estate therein, and ''calendar week'' means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of

trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel

number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term ''newspaper of general circulation,'' as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the

Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,

(Deed of trust or mortgage)

DATED ____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to

a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars ($50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 2. Section 3440.5 of the Civil Code, as amended by Chapter 991 of the Statutes of 1999, is amended to read:

3440.5. (a) This chapter does not affect the rights of a secured party who, for value and in good faith, acquires a security interest in the transferred personal property from the transferee, or from the transferee's successor in interest, if the transferor is no longer in possession of the personal property at the time the security interest attaches.

(b) Additionally, except as provided in Section 3440.3, this chapter does not affect the rights of a secured party who acquires a security interest from the transferee, or from the transferee's successor in interest, in the personal property, if all of the following conditions are satisfied:

(1) On or before the date the security agreement is executed, the intended debtor or secured party files a financing statement with respect to the property transferred, signed by the intended debtor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but shall use the terms ''transferor'' in lieu of ''debtor,'' ''transferee'' in lieu of ''secured party,'' and ''secured party'' in lieu of ''assignee of secured party.'' The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to such a statement. For the purpose of indexing, and in any certification of search, the Secretary of State may refer to any financing statement filed pursuant to this paragraph as a financing statement under the Commercial Code and may describe the transferor as a debtor and the transferee as a secured party.

Compliance with this paragraph shall, however, not perfect the security interest of the secured party. Perfection of such a security interest shall be governed by Division 9 (commencing with Section 9101) of the Commercial Code.

(2) The intended debtor or secured party publishes a notice of the transfer one time in a newspaper of general circulation published in the

judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date of execution by the intended debtor of the intended security agreement. The notice shall contain the names and addresses of the transferor and transferee and of the intended debtor and secured party, a general statement of the character of the personal property transferred and intended to be subject to the security interest, the location of the personal property, and the date on or after which the security agreement is to be executed by the intended debtor.

SEC. 3. Section 1201 of the Commercial Code is amended to read:

1201. The following definitions apply for purposes of this code, subject to additional definitions contained in the subsequent divisions of this code that apply to specific divisions or chapters thereof, and unless the context otherwise requires:

(1) ''Action,'' in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) ''Aggrieved party'' means a party entitled to resort to a remedy.

(3) ''Agreement'' means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing, usage of trade, and course of performance as provided in this code (Sections 1205, 2208, and 10207). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable, and otherwise by the law of contracts (Section 1103). (Compare ''contract.'')

(4) ''Bank'' means any person engaged in the business of banking.

(5) ''Bearer'' means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) ''Bill of lading'' means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a ''bill of lading'' is conclusive evidence of that intention. ''Bill of lading'' includes an airbill. ''Airbill'' means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) ''Branch'' includes a separately incorporated foreign branch of a bank.

(8) ''Burden of establishing'' a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) ''Buyer in ordinary course of business'' means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Division 2 (commencing with Section 2101) may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) ''Conspicuous.'' A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is ''conspicuous'' if it is in larger or other contrasting type or color, except that in a telegram any stated term is ''conspicuous.'' Whether a term or clause is ''conspicuous'' or not is for decision by the court.

(11) ''Contract'' means the total legal obligation that results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare ''agreement.'')

(12) ''Creditor'' includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) ''Defendant'' includes a person in the position of defendant in a cross-action or counterclaim.

(14) ''Delivery,'' with respect to instruments, documents of title, chattel paper, or certificated securities, means the voluntary transfer of possession.

(15) ''Document of title'' includes a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, or compress receipt, and any other document that, in the regular course of business or financing, is treated as adequately evidencing that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the

document and the goods it covers. To be a document of title, a document shall purport to be issued by a bailee and purport to cover goods in the bailee's possession that either are identified as or are fungible portions of an identified mass.

(16) ''Fault'' means wrongful act, omission, or breach.

(17) ''Fungible,'' with respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods that are not fungible shall be deemed fungible for the purposes of this code to the extent that, under a particular agreement or document, unlike units are treated as equivalents.

(18) ''Genuine'' means free of forgery or counterfeiting.

(19) ''Good faith'' means honesty in fact in the conduct or transaction concerned.

(20) ''Holder,'' with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. ''Holder,'' with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To ''honor'' is to pay or to accept and pay or, where a credit so engages, to purchase or discount a draft complying with the terms of the credit.

(22) ''Insolvency proceedings'' includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is ''insolvent'' who either has ceased to pay his or her debts in the ordinary course of business, cannot pay his or her debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

(24) ''Money'' means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has ''notice'' of a fact when any of the following occurs:

(a) He or she has actual knowledge of it.

(b) He or she has received a notice or notification of it.

(c) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists. A person ''knows'' or has ''knowledge'' of a fact when he or she has actual knowledge of it. ''Discover'' or ''learn,'' or a word or phrase of similar import, refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person ''notifies'' or ''gives'' a notice or notification to another by taking those steps that may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person ''receives'' a notice or notification when any of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of these communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his or her regular duties, or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) ''Organization'' includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) ''Party,'' as distinct from ''third party,'' means a person who has engaged in a transaction or made an agreement within this division.

(30) ''Person'' includes an individual or an organization. (See Section 1102.)

(31) ''Purchase'' includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(32) ''Purchaser'' means a person who takes by purchase.

(33) ''Remedy'' means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(34) ''Representative'' includes an agent, an officer of a corporation or association, a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(35) ''Rights'' includes remedies.

(36) (a) ''Security interest'' means an interest in personal property or fixtures that secures payment or performance of an obligation. The term also includes any interest of a cosignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Division 9 (commencing with Section 9101). The special

property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2401 is not a ''security interest,'' but a buyer may also acquire a ''security interest'' by complying with Division 9 (commencing with Section 9101). Except as otherwise provided in Section 2505, the right of a seller or lessor of goods under Division 2 (commencing with Section 2101) or Division 10 (commencing with Section 10101) to retain or acquire possession of the goods is not a ''security interest,'' but a seller or lessor may also acquire a ''security interest'' by complying with Division 9 (commencing with Section 9101). The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a ''security interest.''

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and any of the following conditions applies:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides one or more of the following:

(i) That the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or greater than the fair market value of the goods at the time the lease is entered into.

(ii) That the lessee assumes the risk of loss of the goods, or agrees to pay the taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods.

(iii) That the lessee has an option to renew the lease or to become the owner of the goods.

(iv) That the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.

(v) That the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(vi) In the case of a motor vehicle, as defined in Section 415 of the Vehicle Code, or a trailer, as defined in Section 630 of that code, that is not to be used primarily for personal, family, or household purposes, that the amount of rental payments may be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the vehicle or trailer. Nothing in this subparagraph affects the application or administration of the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code).

(d) For purposes of this subdivision (36), all of the following apply:

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(ii) ''Reasonably predictable'' and ''remaining economic life of the goods'' are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iii) ''Present value'' means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(37) ''Send,'' in connection with any writing or notice, means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there is none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time in which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words ''with return receipt requested'' are also used.

(38) ''Signed'' includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(39) ''Surety'' includes guarantor.

(40) ''Telegram'' includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(41) ''Term'' means that portion of an agreement that relates to a particular matter.

(42) ''Unauthorized'' signature means one made without actual, implied, or apparent authority, and includes a forgery.

(43) ''Value.'' Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4210, and 4211), a person gives ''value'' for rights if he or she acquires them in any of the following ways:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery pursuant to a preexisting contract for purchase.

(d) Generally, in return for any consideration sufficient to support a simple contract.

(44) ''Warehouse receipt'' means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a ''warehouse receipt'' is conclusive evidence of that intention.

(45) ''Written'' or ''writing'' includes printing, typewriting, or any other intentional reduction to tangible form.

SEC. 4. Section 2210 of the Commercial Code is amended to read:

2210. (1) A party may perform his or her duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his or her original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in Section 9406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him or her by his or her contract, or impair materially his or her chance of obtaining return performance. A right to damages for breach of the whole contract or a

right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of, or increases materially the burden or risk imposed on, the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subdivision (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (A) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of ''the contract'' is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of ''the contract'' or of ''all my rights under the contract'' or an assignment in similar general terms is an assignment of rights and, unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor, and its acceptance by the assignee constitutes a promise by him or her to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may, without prejudice to his or her rights against the assignor, demand assurances from the assignee (Section 2609).

SEC. 5. Section 2502 of the Commercial Code is amended to read:

2502. (1) Subject to subdivisions (2) and (3), and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he or she has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if either:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract.

(b) In all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under paragraph (a) of subdivision (1) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his or her special property has been made by the buyer, he or she acquires the right to recover the goods only if they conform to the contract for sale.

SEC. 6. Section 9102 of the Commercial Code is amended to read:

9102. (a) In this division:

(1) ''Accession'' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) ''Account,'' except as used in ''account for,'' means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) ''Account debtor'' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) ''Accounting,'' except as used in ''accounting for,'' means a record that is all of the following:

(A) Authenticated by a secured party.

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record.

(C) Identifying the components of the obligations in reasonable detail.

(5) ''Agricultural lien'' means an interest, other than a security interest, in farm products that meets all of the following conditions:

(A) It secures payment or performance of an obligation for either of the following:

(i) Goods or services furnished in connection with a debtor's farming operation.

(ii) Rent on real property leased by a debtor in connection with its farming operation.

(B) It is created by statute in favor of a person that does either of the following:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation.

(ii) Leased real property to a debtor in connection with the debtor's farming operation.

(C) Its effectiveness does not depend on the person's possession of the personal property.

(6) ''As-extracted collateral'' means either of the following:

(A) Oil, gas, or other minerals that are subject to a security interest that does both of the following:

(i) Is created by a debtor having an interest in the minerals before extraction.

(ii) Attaches to the minerals as extracted.

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) ''Authenticate'' means to do either of the following:

(A) To sign.

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) ''Bank'' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) ''Cash proceeds'' means proceeds that are money, checks, deposit accounts, or the like.

(10) ''Certificate of title'' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) ''Chattel paper'' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, ''monetary obligation'' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software

used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) ''Collateral'' means the property subject to a security interest or agricultural lien. The term includes all of the following:

(A) Proceeds to which a security interest attaches.

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold.

(C) Goods that are the subject of a consignment.

(13) ''Commercial tort claim'' means a claim arising in tort with respect to which either of the following conditions is satisfied:

(A) The claimant is an organization.

(B) The claimant is an individual and both of the following conditions are satisfied regarding the claim:

(i) It arose in the course of the claimant's business or profession.

(ii) It does not include damages arising out of personal injury to or the death of an individual.

(14) ''Commodity account'' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) ''Commodity contract'' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is either of the following:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws.

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) ''Commodity customer'' means a person for which a commodity intermediary carries a commodity contract on its books.

(17) ''Commodity intermediary'' means a person that is either of the following:

(A) Is registered as a futures commission merchant under federal commodities law.

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) ''Communicate'' means to do any of the following:

(A) To send a written or other tangible record.

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record.

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) ''Consignee'' means a merchant to which goods are delivered in a consignment.

(20) ''Consignment'' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and all of the following conditions are satisfied:

(A) The merchant satisfies all of the following conditions:

(i) He or she deals in goods of that kind under a name other than the name of the person making delivery.

(ii) He or she is not an auctioneer.

(iii) He or she is not generally known by its creditors to be substantially engaged in selling the goods of others.

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery.

(C) The goods are not consumer goods immediately before delivery.

(D) The transaction does not create a security interest that secures an obligation.

(21) ''Consignor'' means a person that delivers goods to a consignee in a consignment.

(22) ''Consumer debtor'' means a debtor in a consumer transaction.

(23) ''Consumer goods'' means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) ''Consumer-goods transaction'' means a consumer transaction in which both of the following conditions are satisfied:

(A) An individual incurs an obligation primarily for personal, family, or household purposes.

(B) A security interest in consumer goods secures the obligation.

(25) ''Consumer obligor'' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) ''Consumer transaction'' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) ''Continuation statement'' means an amendment of a financing statement which does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) ''Debtor'' means any of the following:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes.

(C) A consignee.

(29) ''Deposit account'' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) ''Document'' means a document of title or a receipt of the type described in subdivision (2) of Section 7201.

(31) ''Electronic chattel paper'' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) ''Encumbrance'' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) ''Equipment'' means goods other than inventory, farm products, or consumer goods.

(34) ''Farm products'' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

(A) Crops grown, growing, or to be grown, including both of the following:

(i) Crops produced on trees, vines, and bushes.

(ii) Aquatic goods produced in aquacultural operations.

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.

(C) Supplies used or produced in a farming operation.

(D) Products of crops or livestock in their unmanufactured states.

(35) ''Farming operation'' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) ''File number'' means the number assigned to an initial financing statement pursuant to subdivision (a) of Section 9519.

(37) ''Filing office'' means an office designated in Section 9501 as the place to file a financing statement.

(38) ''Filing-office rule'' means a rule adopted pursuant to Section 9526.

(39) ''Financing statement'' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) ''Fixture filing'' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying

subdivisions (a) and (b) of Section 9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) ''Fixtures'' means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) ''General intangible'' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) ''Good faith'' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) ''Goods'' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) ''Governmental unit'' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) ''Health care insurance receivable'' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

(47) ''Instrument'' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary

indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) ''Inventory'' means goods, other than farm products, which are any of the following:

(A) Leased by a person as lessor.

(B) Held by a person for sale or lease or to be furnished under a contract of service.

(C) Furnished by a person under a contract of service.

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) ''Investment property'' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) ''Jurisdiction of organization,'' with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) ''Letter-of-credit right'' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) (A) ''Lien creditor'' means any of the following:

(i) A creditor that has acquired a lien on the property involved by attachment, levy, or the like.

(ii) An assignee for benefit of creditors from the time of assignment.

(iii) A trustee in bankruptcy from the date of the filing of the petition.

(iv) A receiver in equity from the time of appointment.

(B) ''Lien creditor'' does not include a creditor who by filing a notice with the Secretary of State has acquired only an attachment or judgment lien on personal property, or both.

(53) ''Manufactured home'' means a structure, transportable in one or more sections, which, in the traveling mode, is eight body-feet or more in width or 40 body-feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban

Development and complies with the standards established under Title 42 of the United States Code.

(54) ''Manufactured home transaction'' means a secured transaction that satisfies either of the following:

(A) It creates a purchase money security interest in a manufactured home, other than a manufactured home held as inventory.

(B) It is a secured transaction in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) ''Mortgage'' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) ''New debtor'' means a person that becomes bound as debtor under subdivision (d) of Section 9203 by a security agreement previously entered into by another person.

(57) ''New value'' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) ''Noncash proceeds'' means proceeds other than cash proceeds.

(59) ''Obligor'' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) ''Original debtor,'' except as used in subdivision (c) of Section 9310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subdivision (d) of Section 9203.

(61) ''Payment intangible'' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) ''Person related to,'' with respect to an individual, means any of the following:

(A) The spouse of the individual.

(B) A brother, brother-in-law, sister, or sister-in-law of the individual.

(C) An ancestor or lineal descendant of the individual or the individual's spouse.

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) ''Person related to,'' with respect to an organization, means any of the following:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization.

(B) An officer or director of, or a person performing similar functions with respect to, the organization.

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A).

(D) The spouse of an individual described in subparagraph (A), (B), or (C).

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) ''Proceeds,'' except as used in subdivision (b) of Section 9609, means any of the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) ''Promissory note'' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) ''Proposal'' means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9620, 9621, and 9622.

(67) ''Public finance transaction'' means a secured transaction in connection with which all of the following conditions are satisfied:

(A) Debt securities are issued.

(B) All or a portion of the securities issued have an initial stated maturity of at least 20 years.

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) ''Pursuant to commitment,'' with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) ''Record,'' except as used in ''for record,'' ''of record,'' ''record or legal title,'' and ''record owner,'' means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) ''Registered organization'' means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) ''Secondary obligor'' means an obligor to the extent that either of the following conditions are satisfied:

(A) The obligor's obligation is secondary.

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) ''Secured party'' means any of the following:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.

(B) A person that holds an agricultural lien.

(C) A consignor.

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.

(F) A person that holds a security interest arising under Section 2401, 2505, 4210, or 5118, or under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.

(73) ''Security agreement'' means an agreement that creates or provides for a security interest.

(74) ''Send,'' in connection with a record or notification, means to do either of the following:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances.

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) ''Software'' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) ''State'' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) ''Supporting obligation'' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(78) ''Tangible chattel paper'' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) ''Termination statement'' means an amendment of a financing statement that does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) ''Transmitting utility'' means a person primarily engaged in the business of any of the following:

(A) Operating a railroad, subway, street railway, or trolley bus.

(B) Transmitting communications electrically, electromagnetically, or by light.

(C) Transmitting goods by pipeline or sewer.

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other divisions apply to this division:

''Applicant''	Section 5102.
''Beneficiary''	Section 5102.
''Broker''	Section 8102.
''Certificated security''	Section 8102.
''Check''	Section 3104.
''Clearing corporation''	Section 8102.
''Contract for sale''	Section 2106.
''Customer''	Section 4104.
''Entitlement holder''	Section 8102.
''Financial asset''	Section 8102.
''Holder in due course''	Section 3302.
''Issuer'' (with respect to a letter of credit or letter–of–credit right)	Section 5102.
''Issuer'' (with respect to a security)	Section 8201.
''Lease''	Section 10103.
''Lease agreement''	Section 10103.
''Lease contract''	Section 10103.

''Leasehold interest''	Section 10103.
''Lessee''	Section 10103.
''Lessee in ordinary course of business''	Section 10103.
''Lessor''	Section 10103.
''Lessor's residual interest''	Section 10103.
''Letter of credit''	Section 5102.
''Merchant''	Section 2104.
''Negotiable instrument''	Section 3104.
''Nominated person''	Section 5102.
''Note''	Section 3104.
''Proceeds of a letter of credit''	Section 5114.
''Prove''	Section 3103.
''Sale''	Section 2106.
''Securities account''	Section 8501.
''Securities intermediary''	Section 8102.
''Security''	Section 8102.
''Security certificate''	Section 8102.
''Security entitlement''	Section 8102.
''Uncertificated security''	Section 8102.

(c) Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 7. Section 9104 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9104. (a) A secured party has control of a deposit account if any of the following conditions is satisfied:

(1) The secured party is the bank with which the deposit account is maintained.

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor.

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied subdivision (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

SEC. 8. Section 9205 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9205. (a) A security interest is not invalid or fraudulent against creditors solely because either of the following applies:

(1) The debtor has the right or ability to do any of the following:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods.

(B) Collect, compromise, enforce, or otherwise deal with collateral.

(C) Accept the return of collateral or make repossessions.

(D) Use, commingle, or dispose of proceeds.

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

SEC. 9. Section 9210 of the Commercial Code is amended to read:

9210. (a) In this section:

(1) ''Request'' means a record of a type described in paragraph (2), (3), or (4).

(2) ''Request for an accounting'' means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) ''Request regarding a list of collateral'' means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) ''Request regarding a statement of account'' means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subdivisions (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt as follows:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting.

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record that contains both of the following:

(1) It disclaims any interest in the collateral.

(2) If known to the recipient, it provides the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record that contains both of the following:

(1) It disclaims any interest in the obligations.

(2) If known to the recipient, it provides the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars ($25) for each additional response.

SEC. 10. Section 9307 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9307. (a) In this section, ''place of business'' means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subdivision (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subdivision (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subdivisions (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subdivision (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located in any of the following jurisdictions:

(1) In the state that the law of the United States designates, if the law designates a state of location.

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location.

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subdivision (e) or (f) notwithstanding either of the following:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization.

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this chapter.

SEC. 11. Section 9311 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9311. (a) Except as otherwise provided in subdivision (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to any of the following:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subdivision (a) of Section 9310.

(2) (A) The provisions of the Vehicle Code which require registration of a vehicle or boat.

(B) The provisions of the Health and Safety Code which require registration of a mobilehome or commercial coach, except that during any period in which collateral is inventory, the filing provisions of Chapter 5 (commencing with Section 9501) apply to a security interest in that collateral.

(C) The provisions of the Health and Safety Code which require registration of all interests in approved air contaminant emission reductions (Sections 40709 to 40713, inclusive, of the Health and Safety Code).

(3) A certificate of title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subdivision (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this division. Except as otherwise provided in subdivision (d), in Section 9313, and in subdivisions (d) and (e) of Section 9316 for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subdivision (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subdivision (d) and in subdivisions (d) and (e) of Section 9316, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subdivision (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this division.

(d) During any period in which collateral subject to a statute specified in paragraph (2) of subdivision (a) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

SEC. 12. Section 9317 of the Commercial Code is amended to read:

9317. (a) A security interest or agricultural lien is subordinate to the rights of both of the following:

(1) A person entitled to priority under Section 9322.

(2) Except as otherwise provided in subdivision (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected, or one of the conditions specified in paragraph (3) of subdivision (b) of Section 9203 is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subdivision (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subdivision (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 9320 and 9321, if a person files a financing statement with respect to a purchase money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

SEC. 13. Section 9319 of the Commercial Code is amended to read:

9319. (a) Except as otherwise provided in subdivision (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this division determines the rights and title of a consignee while goods are in the consignee's possession if, under this chapter, a perfected security interest held by the consignor would have priority over the rights of the creditor.

SEC. 14. Section 9323 of the Commercial Code is amended to read:

9323. (a) Except as otherwise provided in subdivision (c), for purposes of determining the priority of a perfected security interest under paragraph (1) of subdivision (a) of Section 9322, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that satisfies both of the following conditions:

(1) It is made while the security interest is perfected only under either of the following:

(A) Under Section 9309 when it attaches.

(B) Temporarily under subdivision (e), (f), or (g) of Section 9312.

(2) It is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 9309 or under subdivision (e), (f), or (g) of Section 9312.

(b) Except as otherwise provided in subdivision (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless either of the following conditions is satisfied:

(1) The advance is made without knowledge of the lien.

(2) The advance is made pursuant to a commitment entered into without knowledge of the lien.

(c) Subdivisions (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subdivision (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of the following:

(1) The time the secured party acquires knowledge of the buyer's purchase.

(2) Forty-five days after the purchase.

(e) Subdivision (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Except as otherwise provided in subdivision (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of either of the following:

(1) The time the secured party acquires knowledge of the lease.

(2) Forty-five days after the lease contract becomes enforceable.

(g) Subdivision (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

SEC. 15. Section 9325 of the Commercial Code is amended to read:

9325. (a) Except as otherwise provided in subdivision (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if all of the following apply:

(1) The debtor acquired the collateral subject to the security interest created by the other person.

(2) The security interest created by the other person was perfected when the debtor acquired the collateral.

(3) There is no period thereafter when the security interest is unperfected.

(b) Subdivision (a) subordinates a security interest only if either of the following conditions is satisfied:

(1) The security interest otherwise would have priority solely under subdivision (a) of Section 9322 or under Section 9324.

(2) The security interest arose solely under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.

SEC. 16. Section 9331 of the Commercial Code is amended to read:

9331. (a) This division does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Division 3 (commencing with Section 3101), Division 7 (commencing with Section 7101), and Division 8 (commencing with Section 8101).

(b) This division does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Division 8 (commencing with Section 8101).

(c) Filing under this division does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subdivisions (a) and (b).

SEC. 17. Section 9336 of the Commercial Code is amended to read:

9336. (a) In this section, ''commingled goods'' means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subdivision (c) is perfected.

(e) Except as otherwise provided in subdivision (f), the other provisions of this chapter determine the priority of a security interest that attaches to the product or mass under subdivision (c).

(f) If more than one security interest attaches to the product or mass under subdivision (c), the following rules determine priority:

(1) A security interest that is perfected under subdivision (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subdivision (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

SEC. 18. Section 9403 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 19. Section 9403 of the Commercial Code, as amended by Section 14 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 20. Section 9403 is added to the Commercial Code, to read:

9403. (a) In this section, ''value'' has the meaning provided in subdivision (a) of Section 3303.

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment that satisfies all of the following conditions:

(1) It is taken for value.

(2) It is taken in good faith.

(3) It is taken without notice of a claim of a property or possessory right to the property assigned.

(4) It is taken without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under subdivision (a) of Section 3305.

(c) Subdivision (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under subdivision (b) of Section 3305.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this division requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement, then both of the following apply:

(1) The record has the same effect as if the record included such a statement.

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subdivision (d), this section does not displace law other than this division which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

SEC. 21. Section 9404 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 22. Section 9404 of the Commercial Code, as amended by Section 15 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 23. Section 9404 is added to the Commercial Code, to read:

9404. (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subdivisions (b) to (e), inclusive, the rights of an assignee are subject to both of the following:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract.

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subdivision (c) and except as otherwise provided in subdivision (d), the claim of an account debtor against an assignor may be asserted against an assignee under subdivision (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this division requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health care insurance receivable.

SEC. 24. Section 9405 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 25. Section 9405 of the Commercial Code, as amended by Section 16 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 26. Section 9405 is added to the Commercial Code, to read:

9405. (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subdivision is subject to subdivisions (b) to (d), inclusive.

(b) Subdivision (a) applies to the extent that either of the following apply:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance.

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under subdivision (a) of Section 9406.

(c) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health care insurance receivable.

SEC. 27. Section 9406 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 28. Section 9406 of the Commercial Code, as amended by Section 17 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 29. Section 9406 is added to the Commercial Code, to read:

9406. (a) Subject to subdivisions (b) to (i), inclusive, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subdivision (h), notification is ineffective under subdivision (a) as follows:

(1) If it does not reasonably identify the rights assigned.

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this division.

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if any of the following conditions is satisfied:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee.

(B) A portion has been assigned to another assignee.

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subdivision (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subdivision (a).

(d) Except as otherwise provided in subdivision (e) and in Sections 9407 and 10303, and subject to subdivision (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it does either of the following:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note.

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subdivision (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in Sections 9407 and 10303, and subject to subdivisions (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation does either of the following:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper.

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subdivision (h), an account debtor may not waive or vary its option under paragraph (3) of subdivision (b).

(h) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable.

(j) Subdivision (f) does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a claim or right to receive compensation for injuries or sickness as described in paragraph (1) or (2) of subdivision (a) of Section 104 of Title 26 of the United States Code, as amended, or a claim or right to receive benefits under a special needs trust as described in paragraph (4) of subdivision (d) of Section 1396p of Title 42 of the United States Code, as amended, to the extent that subdivision (f) is inconsistent with those laws.

SEC. 30. Section 9407 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9407. (a) Except as otherwise provided in subdivision (b), a term in a lease agreement is ineffective to the extent that it does either of the following:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods.

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in subdivision (g) of Section 10303, a term described in paragraph (2) of subdivision (a) is effective to the extent that there is either of the following:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term.

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subdivision (d) of Section 10303 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

SEC. 31. Section 9408 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9408. (a) Except as otherwise provided in subdivision (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general

intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subdivision (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or the creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subdivision (c) would be effective under law other than this division but is ineffective under subdivision (a) or (c), all of the following rules apply with respect to the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) It is not enforceable against the person obligated on the promissory note or the account debtor.

(2) It does not impose a duty or obligation on the person obligated on the promissory note or the account debtor.

(3) It does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

(4) It does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible.

(5) It does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor.

(6) It does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

(e) Subdivision (c) does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a claim or right to receive compensation for injuries or sickness as described in paragraph (1) or (2) of subdivision (a) of Section 104 of Title 26 of the United States Code, as amended, or a claim or right to receive benefits under a special needs trust as described in paragraph (4) of subdivision (d) of Section 1396p of Title 42 of the United States Code, as amended, to the extent that subdivision (c) is inconsistent with those laws.

SEC. 32. Section 9409 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is repealed.

SEC. 33. Section 9409 of the Commercial Code, as amended by Section 18 of Chapter 1000 of the Statutes of 1999, is repealed.

SEC. 34. Section 9409 is added to the Commercial Code, to read:

9409. (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right.

(2) It provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subdivision (a) but would be effective under law other than this division

or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, all of the following rules apply with respect to the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) It is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary.

(2) It imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary.

(3) It does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

SEC. 35. Section 9502 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9502. (a) Subject to subdivision (b), a financing statement is sufficient only if it satisfies all of the following conditions:

(1) It provides the name of the debtor.

(2) It provides the name of the secured party or a representative of the secured party.

(3) It indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in subdivision (b) of Section 9501, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subdivision (a) and also satisfy all of the following conditions:

(1) Indicate that it covers this type of collateral.

(2) Indicate that it is to be recorded in the real property records.

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property.

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if all of the following conditions are satisfied:

(1) The record indicates the goods or accounts that it covers.

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut.

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records.

(4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

SEC. 36. Section 9505 of the Commercial Code, as added by Section 35 of Chapter 991 of the Statutes of 1999, is amended to read:

9505. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in subdivision (a) of Section 9311, using the terms ''consignor,'' ''consignee,'' ''lessor,'' ''lessee,'' ''bailor,'' ''bailee,'' ''licensor,'' ''licensee,'' ''owner,'' ''registered owner,'' ''buyer,'' ''seller,'' or words of similar import, instead of the terms ''secured party'' and ''debtor.''

(b) This chapter applies to the filing of a financing statement under subdivision (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under subdivision (b) of Section 9311, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

SEC. 37. Section 9509 of the Commercial Code is amended to read:

9509. (a) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subdivision (b) or (c).

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering both of the following:

(1) The collateral described in the security agreement.

(2) Property that becomes collateral under paragraph (2) of subdivision (a) of Section 9315, whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under paragraph (1) of subdivision (a) of Section 9315, a debtor authorizes the filing of an initial financing statement, and an

amendment, covering the collateral and property that becomes collateral under paragraph (2) of subdivision (a) of Section 9315.

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The secured party of record authorizes the filing.

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by subdivision (a) or (c) of Section 9513, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subdivision (d).

SEC. 38. Section 9513 of the Commercial Code is amended to read:

9513. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and either of the following conditions is satisfied:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subdivision (a), a secured party shall cause the secured party of record to file the termination statement in accordance with either of the following rules:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subdivision (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if any of the following conditions is satisfied:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation.

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession.

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 9510, for purposes of subdivision (g) of Section 9519, subdivision (a) of Section 9522, and subdivision (c) of Section 9523, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

SEC. 39. Section 9519 of the Commercial Code is amended to read:

9519. (a) For each record filed in a filing office, the filing office shall do all of the following:

(1) Assign a unique number to the filed record.

(2) Create a record that bears the number assigned to the filed record and the date and time of filing.

(3) Maintain the filed record for public inspection.

(4) Index the filed record in accordance with subdivisions (c), (d), and (e).

(b) Except as otherwise provided in subdivision (i), a file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number.

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subdivisions (d) and (e), the filing office shall do both of the following:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be recorded and the filing office shall index it in accordance with both of the following rules:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described.

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under subdivision (a) of Section 9514 or an amendment filed under subdivision (b) of Section 9514 in accordance with both of the following rules:

(1) Under the name of the assignor as grantor.

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability to do both of the following:

(1) Retrieve a record by the name of the debtor and by either of the following:

(A) If the filing office is described in paragraph (1) of subdivision (a) of Section 9501, by the file number assigned to the initial financing statement to which the record relates and the date that the record was filed or recorded.

(B) If the filing office is described in paragraph (2) of subdivision (a) of Section 9501, by the file number assigned to the initial financing statement to which the record relates.

(2) Associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 9515 with respect to all secured parties of record.

(h) Except as otherwise provided in subdivision (i), the filing office shall perform the acts required by subdivisions (a) to (e), inclusive, at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) Subdivisions (b) and (h) do not apply to a filing office described in paragraph (1) of subdivision (a) of Section 9501.

SEC. 40. Section 9524 of the Commercial Code is amended to read:

9524. Delay by the filing office beyond a time limit prescribed by this chapter is excused if both of the following conditions are satisfied:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office.

(2) The filing office exercises reasonable diligence under the circumstances.

SEC. 41. Section 9525 of the Commercial Code is amended to read:

9525. (a) Except as otherwise provided in subdivision (d), the fee for filing and indexing a record under this chapter is set forth in subdivisions (a), (b), and (c) of Section 12194 of the Government Code.

(b) The number of names required to be indexed does not affect the amount of the fee in subdivision (a).

(c) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is as follows:

(1) Ten dollars ($10) if the request is communicated in writing.

(2) Five dollars ($5) if the request is communicated by another medium authorized by a rule adopted by the filing office.

(d) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subdivision (c) of Section 9502. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

SEC. 42. Section 9608 of the Commercial Code is amended to read:

9608. (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made.

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien

within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subparagraph (C) of paragraph (1).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and except as otherwise provided in subdivision (b) of Section 9626, the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency. Subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds applies only if the security agreement provides that the debtor is entitled to any surplus.

SEC. 43. Section 9611 of the Commercial Code is amended to read:

9611. (a) In this section, ''notification date'' means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition.

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subdivision (d), a secured party that disposes of collateral under Section 9610 shall send to the persons specified in subdivision (c) a reasonable authenticated notification of disposition.

(c) To comply with subdivision (b), the secured party shall send an authenticated notification of disposition to all of the following persons:

(1) The debtor.

(2) Any secondary obligor.

(3) If the collateral is other than consumer goods to both of the following persons:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral.

(B) Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement with respect to which all of the following apply:

(i) It identified the collateral.

(ii) It was indexed under the debtor's name as of that date.

(iii) It was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date.

(C) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subdivision (a) of Section 9311.

(d) Subdivision (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed in subparagraph (B) of paragraph (3) of subsection (c) if it satisfies both of the following conditions:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subparagraph (B) of paragraph (3) of subdivision (c).

(2) Before the notification date, the secured party either:

(A) Did not receive a response to the request for information.

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

SEC. 44. Section 9613 of the Commercial Code is amended to read:

9613. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification does all of the following:

(A) It describes the debtor and the secured party.

(B) It describes the collateral that is the subject of the intended disposition.

(C) It states the method of intended disposition.

(D) It states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting.

(E) It states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes either of the following:

(A) Information not specified by that paragraph.

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in subdivision (3) of Section 9614, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: _____
[Name of debtor, obligor, or other person to which the notification is sent]

From: _____
[Name, address, and telephone number of secured party]

Name of Debtor(s): _____
[Include only if debtor(s) are not an addressee]

[For a public disposition:]
We will sell [or lease or license, as applicable] the _____ [to the highest qualified bidder in public as follows:]
[describe collateral]

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]
We will sell [or license, as applicable] the _____
(describe collateral)
privately sometime after _____.
[day and date]
You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $___]. You may request an accounting by calling us at _____.
[telephone number]

SEC. 45. Section 9615 of the Commercial Code is amended to read:

9615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9610 in the following order to each of the following:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made.

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if both of the following conditions are satisfied:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds or notice of the levy of attachment or execution before distribution of the proceeds is completed.

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor.

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under paragraph (3) of subdivision (a).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subdivision (a) and permitted by subdivision (c), both of the following apply:

(1) Unless paragraph (4) of subdivision (a) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure.

(2) Subject to subdivision (b) of Section 9626, the obligor is liable for any deficiency.

(e) (1) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, both of the following apply:

(A) The debtor is not entitled to any surplus.

(B) The obligor is not liable for any deficiency.

(2) Subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds and the liability of the secured party applies only if the security agreement provides that the debtor is entitled to any surplus.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this chapter to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if both of the following apply:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor.

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) The following rules apply with respect to a secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) The secured party takes the cash proceeds free of the security interest or other lien.

(2) The secured party is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien.

(3) The secured party is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

SEC. 46. Section 9625 of the Commercial Code is amended to read:

9625. (a) If it is established that a secured party is not proceeding in accordance with this division, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subdivisions (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this division. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 9628, a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subdivision (b) for its loss.

(d) A debtor whose deficiency is eliminated under Section 9626 may recover damages for the loss of any surplus. However, in a transaction other than a consumer transaction, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9626 may not otherwise recover under subdivision (b) for noncompliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subdivision (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars ($500) in each case from any of the following persons:

(1) A person that fails to comply with Section 9208.

(2) A person that fails to comply with Section 9209.

(3) A person that files a record that the person is not entitled to file under subdivision (a) of Section 9509.

(4) A person that fails to cause the secured party of record to file or send a termination statement as required by subdivision (a) or (c) of Section 9513.

(5) A person that fails to comply with paragraph (1) of subdivision (b) of Section 9616 and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(6) A person that fails to comply with paragraph (2) of subdivision (b) of Section 9616.

(f) A debtor or consumer obligor may recover damages under subdivision (b) and, in addition, five hundred dollars ($500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 9210. A recipient of a request under Section 9210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subdivision.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

SEC. 47. Section 9626 of the Commercial Code is amended to read:

9626. (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this chapter.

(3) Except as otherwise provided in Section 9628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of either of the following:

(A) The proceeds of the collection, enforcement, disposition, or acceptance.

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of subparagraph (B) of paragraph (3), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under subdivision (f) of Section 9615, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) In a consumer transaction, the following rules apply:

(1) In an action in which a deficiency or a surplus is an issue:

(A) A secured party has the burden of proving compliance with the provisions of this chapter relating to collection, enforcement, disposition, and acceptance whether or not the debtor or a secondary obligor places the secured party's compliance in issue.

(B) If a deficiency or surplus is calculated under subdivision (f) of Section 9615, the secured party has the burden of establishing that the amount of proceeds of the disposition is not significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(2) The debtor or any secondary obligor is liable for any deficiency only if all of the following conditions are met:

(A) It is not otherwise agreed or otherwise provided in the Retail Installment Sales Act (Chapter 1 (commencing with Section 1801), Title

2, Part 4, Division 3, Civil Code), and, in particular, Section 1812.5 of the Civil Code or any other statute.

(B) The debtor and obligor were given notice, in accordance with Sections 9611, 9612, and 9613, or Section 9614, as applicable, of the disposition of the collateral.

(C) The collection, enforcement, disposition, and acceptance by the secured party were conducted in good faith and in a commercially reasonable manner.

(3) Upon entry of a final judgment that the debtor or obligor is not liable for a deficiency by reason of paragraph (2) or subdivision (f) of Section 9615, the secured party may neither obtain a deficiency judgment nor retain a security interest in any other collateral of the debtor or obligor that secured the indebtedness for which the debtor or obligor is no longer liable.

(4) If, subsequent to a disposition that does not satisfy any one or more of the conditions set forth in paragraph (2), or subsequent to a disposition that is subject to subdivision (f) of Section 9615, the secured party disposes pursuant to this section of other collateral securing the same indebtedness, the debtor or obligor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (2) or subdivision (f) of Section 9615, recover the proceeds realized from the subsequent dispositions, as well as any damages to which the debtor may be entitled if the subsequent disposition is itself noncomplying or otherwise wrongful.

(5) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (b) of Section 9625, or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law. A debtor or obligor in a consumer transaction shall not have any damages owed to it reduced by the amount of any deficiency that would have resulted had the disposition of the collateral by the secured party been conducted in conformity with this division.

(6) The secured party shall account to the debtor for any surplus, except as provided in Section 701.040 of the Code of Civil Procedure.

SEC. 48. Section 9702 of the Commercial Code is amended to read:

9702. (a) Except as otherwise provided in this chapter, this division applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this division takes effect.

(b) Except as otherwise provided in subdivision (c) and in Sections 9703 to 9709, inclusive, both of the following rules apply:

(1) Transactions and liens that were not governed by former Division 9, were validly entered into or created before July 1, 2001, and would be subject to this act if they had been entered into or created after July 1,

2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001.

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this division or by the law that otherwise would apply if this division had not taken effect.

(c) This division does not affect an action, case, or proceeding commenced before July 1, 2001.

SEC. 49. Section 9705 of the Commercial Code is amended to read:

9705. (a) If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this division on or before July 1, 2002. An attached security interest becomes unperfected on July 1, 2002, unless the security interest becomes a perfected security interest under this division before that date.

(b) The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this division.

(c) This division does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9103. However, except as otherwise provided in subdivisions (d) and (e) and in Section 9706, the financing statement ceases to be effective at the earlier of either of the following:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed.

(2) June 30, 2006.

(d) The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Chapter 3 (commencing with Section 9301), the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) Paragraph (2) of subdivision (c) applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9103 only to the extent that Chapter 3 (commencing with Section 9301) provides that the law of a jurisdiction other than the jurisdiction in which

the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Chapter 5 (commencing with Section 9501) for an initial financing statement.

SEC. 50. Section 9707 of the Commercial Code is amended and renumbered to read:

9708. A person may file an initial financing statement or a continuation statement under this chapter if both of the following conditions are satisfied:

(1) The secured party of record authorizes the filing.

(2) The filing is necessary under this chapter to do either of the following:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001.

(B) To perfect or continue the perfection of a security interest.

SEC. 51. Section 9707 is added to the Commercial Code, to read:

9707. (a) In this section, ''pre-effective-date financing statement'' means a financing statement filed before the date that this section becomes operative.

(b) After the date this section becomes operative, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Chapter 3 (commencing with Section 9301). However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided by subdivision (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the date this section becomes operative only if any of the following occur:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in Section 9501.

(2) An amendment is filed in the office specified in Section 9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies subdivision (c) of Section 9706.

(3) An initial financing statement that provides the information as amended and satisfies subdivision (c) of Section 9706 is filed in the office specified in Section 9501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be

continued only under subdivisions (d) and (f) of Section 9705 or Section 9706.

(e) Whether or not the law of this state governs the perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the date that this section becomes operative by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial filing statement that satisfies subdivision (c) of Section 9706 has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Chapter 3 (commencing with Section 9301) as the office in which to file a financing statement.

SEC. 52. Section 9708 of the Commercial Code is amended and renumbered to read:

9709. (a) This division determines priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, former Division 9 (commencing with Section 9101) determines priority.

(b) For purposes of subdivision (a) of Section 9322, the priority of a security interest that becomes enforceable under Section 9203 dates from July 1, 2001, if the security interest is perfected under this division by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under former Division 9 (commencing with Section 9101). This subdivision does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

SEC. 53. Section 12183 of the Government Code is amended to read:

12183. The Secretary of State shall charge and collect the following fees for certification:

(a) Certification of a document: Five dollars ($5).

(b) Certificate of status or filing: Five dollars ($5).

(c) Certificate of information: Ten dollars ($10) if the request is communicated in writing, and five dollars ($5) if the request is communicated by another medium authorized by a rule adopted by the office of the Secretary of State.

SEC. 54. Section 12194 of the Government Code is amended to read:

12194. The fees for filing liens pursuant to the Code of Civil Procedure and for filing financing statements and other Uniform Commercial Code filings are the following:

(a) Ten dollars ($10) if the record is communicated in writing and consists of one or two pages.

(b) Twenty dollars ($20) if the record is communicated in writing and consists of more than two pages.

(c) Five dollars ($5) if the record is communicated by another medium authorized by a rule adopted by the office of the Secretary of State.

(d) Two dollars ($2) if the record is a state tax lien certificate of release.

The Secretary of State shall collect a special handling fee for filing records in the manner provided in Section 12182.

Financing statements and other Uniform Commercial Code filings shall be submitted on national standard forms as approved by the office of the Secretary of State.

SEC. 55. Section 27291 is added to the Government Code, to read:

27291. (a) Notwithstanding any provision of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code or any other provision of law, a financing statement to perfect a security interest or agricultural lien may, at the election of the recorder and subject to the conditions of subdivision (b), be recorded instead of filed.

(b) A recorder may elect to record a financing statement if all of the following apply:

(1) The recorder employs a system of microphotography, optical disk, or other reproduction system that does not permit additions, deletions, or other changes to the permanent record of the original document.

(2) All film used in the microphotography process complies with minimum standards of quality approved by the United States Bureau of Standards and the American National Standards Institute.

(3) A true copy of the microfilm, optical disk, or other storage medium is kept in a safe and separate place for security purposes.

(c) A certified copy of any record stored or retained on microfilm, optical disk, or other reproduction system pursuant to this section shall be admissible in any court to the same extent as the original record.

SEC. 56. The provisions of this act, exclusive of Sections 18, 21, 24, 27, and 32 shall become operative on July 1, 2001.

CHAPTER 1004

An act to amend Section 11010.05 of the Business and Professions Code, and to amend Sections 51.2, 51.3, 51.4, 51.11, and 51.12 of the Civil Code, relating to senior housing.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11010.05 of the Business and Professions Code is amended to read:

11010.05. A person who proposes to create a senior citizen housing development, as defined in Section 51.3 or 51.11 of the Civil Code, shall include in the application for a public report a complete statement of the restrictions on occupancy that are to be applicable in the development. Any public report issued for a senior housing development shall also include a complete statement of the restrictions on occupancy to be applicable in the development. This section shall become operative on July 1, 2001, and shall apply to all applications for a public report for a senior housing development submitted to the department on or after July 1, 2001.

SEC. 2. Section 51.2 of the Civil Code is amended to read:

51.2. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being designed to meet physical and social needs of senior citizens.

(b) This section is intended to clarify the holdings in Marina Point, Ltd. v. Wolfson (1982) 30 Cal. 3d 72 and O'Connor v. Village Green Owners Association (1983) 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

(d) A housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

(1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair.

(2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.

(3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

(4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.

(5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

(6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

(7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations which relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws.

In addition, developers of senior citizen housing developments constructed on or after January 1, 2001 are encouraged, but not required, to implement in their construction the principles of Universal Design as promulgated by the Center for Universal Design at the North Carolina State University, or any other design guidelines for home modifications for seniors which may be promulgated in the future by the Department of Aging.

SEC. 3. Section 51.3 of the Civil Code is amended to read:

51.3. (a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) ''Qualifying resident'' or ''senior citizen'' means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) ''Qualified permanent resident'' means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) ''Qualified permanent resident'' also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, ''disabled'' means a person who has a disability as defined in subdivision (b) of Section 54. A ''disabling injury or illness'' means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) ''Senior citizen housing development'' means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing

development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

(5) ''Dwelling unit'' or ''housing'' means any residential accommodation other than a mobilehome.

(6) ''Cohabitant'' refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) ''Permitted health care resident'' means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4. That limitation may be less

exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For

purposes of this subdivision, the term ''for compensation'' shall include provisions of lodging and food in exchange for care.

(j) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

SEC. 3.5. Section 51.3 of the Civil Code is amended to read:

51.3. (a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) ''Qualifying resident'' or ''senior citizen'' means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) ''Qualified permanent resident'' means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) ''Qualified permanent resident'' also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, ''disabled'' means a person who has a disability as defined in subdivision (b) of Section 54. A ''disabling injury or illness'' means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is

likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) ''Senior citizen housing development'' means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001 shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify because it was not originally developed or put to use for occupancy by senior citizens.

In order for the development to qualify as a ''senior citizen housing development,'' at least 80 percent of its occupied units must be occupied by at least one person who is 55 years of age or older. A ''senior citizen housing development'' satisfies the requirements of this section even though:

(A) On September 13, 1988, under 80 percent of the occupied units in the housing development were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the dwelling units occupied by new occupants after September 13, 1988, were occupied by at least one person 55 years of age or older.

(B) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(5) ''Dwelling unit'' or ''housing'' means any residential accommodation other than a mobilehome.

(6) ''Cohabitant'' refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) ''Permitted health care resident'' means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily living activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit, only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions or other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are

specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term ''for compensation'' shall include provisions of lodging and food in exchange for care.

(j) Any person who is a real estate broker or salesperson, or any individual homeowner in a senior citizen housing development which is comprised of dwelling units available for separate ownership, shall not be held personally liable for monetary damages for discrimination on the basis of age or familial status with regard to any housing development claiming to meet the requirements applicable to senior citizen housing developments if all of the following requirements are met:

(1) The person acted with the good faith belief that the housing development complies with the requirements applicable to a senior citizen housing development.

(2) The person acted in reliance on, and with actual knowledge of, a written assertion by the housing development, through its authorized representatives, that the development complies with the requirements applicable to a senior citizen housing development.

(3) Before the date on which the discrimination is alleged to have occurred, the development, through its authorized representatives, has certified, in writing and under oath or affirmation, to the person claiming the defense under this subdivision, that the development complies with the requirements applicable to senior citizen housing developments.

(4) The person claiming the defense under this subdivision has no actual knowledge that the development does not comply with the requirements applicable to senior citizen housing developments.

For the purpose of this subdivision, an authorized representative of a development means the individual, committee, management company, owner, or other entity having responsibility for compliance with the requirements applicable to senior citizen housing developments.

The defense under this subdivision is available only to natural persons, and shall not apply to any corporate entity, including, without limitation, an ''association.'' For the purpose of this subdivision, the term ''association'' shall mean the governing entity of the senior citizen housing development. To the extent that monetary liability of an association is paid from assessments on members, the defense set forth in this subdivision shall not be available to any member to bar collection of any such assessment from any member.

No individual volunteer director or officer of an association of a development which claims to be a senior citizen housing development shall be personally liable for monetary damages for discrimination on the basis of age or familial status if the officer or director's conduct meets all of the following:

(A) The duties are performed in good faith.

(B) The duties are performed in a manner the director or officer believes to be in the best interests of the corporation.

(C) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

''Volunteer'' means the rendering of services without compensation. ''Compensation'' means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(k) The Fair Employment and Housing Commission shall adopt regulations that will permit a senior citizen housing development to apply for and obtain a certification by the Department of Fair Employment and Housing that, based on appropriate evidence, the senior citizen housing development complies with the requirements of this part and with the requirements of the federal Fair Housing Act applicable to ''housing for older persons'' as defined by 42 U.S.C. Section 3607 (b)(2)(C). Certification shall have the effect of a rebuttable presumption, as defined in Section 604 of the Evidence Code, that the development complies with the requirements of this part. The Department of Fair Employment and Housing may impose a reasonable application fee not to exceed two hundred fifty dollars ($250) upon applicants seeking this certification.

(*l*) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

SEC. 4. Section 51.4 of the Civil Code is amended to read:

51.4. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments which were constructed before the decision in Marina Point Ltd. v. Wolfson (1982), 30 Cal. 3d 72. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Sections 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development which relied on the exemption to the special design requirement provided by this section prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of Senate Bill 1382 or Senate Bill 2011 at the 1999–2000 Regular Session of the Legislature.

(c) This section shall not apply to the County of Riverside.

SEC. 4.5. Section 51.4 of the Civil Code is amended to read:

51.4. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430) in recognition of the

acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments which were constructed before the decision in Marina Point Ltd. v. Wolfson (1982), 30 Cal. 3d 72. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Sections 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development which relied on the exemption to the special design requirement provided by this section prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of Senate Bill 1382 or Senate Bill 2011 at the 1999–2000 Regular Session of the Legislature.

(c) This section shall not apply to the County of Riverside.

SEC. 5. Section 51.11 of the Civil Code is amended to read:

51.11. (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) ''Qualifying resident'' or ''senior citizen'' means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) ''Qualified permanent resident'' means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) ''Qualified permanent resident'' also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, ''disabled'' means a person who has a disability as defined in subdivision (b) of Section 54. A ''disabling injury or illness'' means an illness or injury which results in a condition

meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under paragraph (3) whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year, after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under paragraph (3) if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in that hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) ''Senior citizen housing development'' means a residential development developed with more than 20 units as a senior community by its developer and zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendments Act of 1988, as amended. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(5) ''Dwelling unit'' or ''housing'' means any residential accommodation other than a mobilehome.

(6) ''Cohabitant'' refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) ''Permitted health care resident'' means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (g) of this section or subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation,

conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside.

SEC. 5.5. Section 51.11 of the Civil Code is amended to read:

51.11. (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) ''Qualifying resident'' or ''senior citizen'' means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) ''Qualified permanent resident'' means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) ''Qualified permanent resident'' also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, ''disabled'' means a person who has a disability as defined in subdivision (b) of Section 54. A ''disabling injury or illness'' means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under paragraph (3) whose disabling condition ends, the owner, board of

directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year, after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under paragraph (3) if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in that hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) ''Senior citizen housing development'' means a residential development developed with more than 20 units as a senior community by its developer and zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendments Act of 1988, as amended. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

In order for the development to qualify as a senior citizen housing development, at least 80 percent of its occupied units must be occupied by at least one person who is 55 years of age or older. A senior citizen

housing development satisfies the requirements of this section even though:

(A) On September 13, 1988, under 80 percent of the occupied units in the housing development were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the dwelling units occupied by new occupants after September 13, 1988, were occupied by at least one person 55 years of age or older.

(B) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(5) ''Dwelling unit'' or ''housing'' means any residential accommodation other than a mobilehome.

(6) ''Cohabitant'' refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) ''Permitted health care resident'' means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily living activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit, only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling

unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (g) of this section or subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying

residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) Any person who is a real estate broker or salesperson, or any individual homeowner in a senior citizen housing development which is comprised of dwelling units available for separate ownership, shall not be held personally liable for monetary damages for discrimination on the basis of age or familial status with regard to any housing development claiming to meet the requirements applicable to senior citizen housing developments if all of the following requirements are met:

(1) The person acted with the good faith belief that the housing development complies with the requirements applicable to a senior citizen housing development.

(2) The person acted in reliance on, and with actual knowledge of, a written assertion by the housing development, through its authorized representatives, that the development complies with the requirements applicable to a senior citizen housing development.

(3) Before the date on which the discrimination is alleged to have occurred, the development, through its authorized representatives, has certified, in writing and under oath or affirmation, to the person claiming the defense under this subdivision that the development complies with the requirements applicable to senior citizen housing developments.

(4) The person claiming the defense under this subdivision has no actual knowledge that the development does not comply with the requirements applicable to senior citizen housing developments.

For the purpose of this subdivision, an authorized representative of a development means the individual, committee, management company, owner, or other entity having responsibility for compliance with the requirements applicable to senior citizen housing developments.

The defense under this subdivision is available only to natural persons and shall not apply to any corporate entity, including, without limitation, an association. For the purpose of this subdivision, the term ''association'' shall mean the governing entity of the senior citizen housing development. To the extent that monetary liability of an association is paid from assessments on members, the defense set forth in this subdivision shall not be available to any member to bar collection of any such assessment from any member.

No individual volunteer director or officer of an association of a development which holds itself out to be a senior citizen housing development shall be personally liable for monetary damages for discrimination on the basis of age or familial status if the officer's or director's conduct meets all of the following requirements:

(A) The duties are performed in good faith.

(B) The duties are performed in a manner the director or officer believes to be in the best interests of the corporation.

(C) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

''Volunteer'' means the rendering of services without compensation. ''Compensation'' means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(k) The Fair Employment and Housing Commission shall adopt regulations which will permit a senior citizen housing development to apply for and obtain a certification by the Department of Fair Employment and Housing that, based on appropriate evidence, the senior citizen housing development complies with the requirements of this part and with the requirements of the federal Fair Housing Act applicable to housing for older persons as defined by 42 U.S.C. Section 3607 (b)(2)(C). Certification shall have the effect of a rebuttable presumption, as defined in Section 604 of the Evidence Code, that the development complies with the requirements of this part. The Department of Fair Employment and Housing may impose a reasonable

application fee not to exceed two hundred fifty dollars ($250) upon applicants seeking this certification.

(*l*) This section shall only apply to the County of Riverside.

SEC. 6. Section 51.12 of the Civil Code is amended to read:

51.12. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.10 and 51.11 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430).

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development which relied on the exemption to the special design requirement provided by Section 51.4 as that section read prior to January 1, 2001, shall not be deprived of the right to continue that residency, or occupancy, or use as the result of the changes made to this section by the enactment of Senate Bill 1382 or Senate Bill 2011 at the 1999–2000 Regular Session of the Legislature.

(c) This section shall only apply to the County of Riverside.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 51.3 of the Civil Code proposed by both this bill and SB 1382. 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 51.3 of the Civil Code, and (3) this bill is enacted after SB 1382, in which case Section 3 of this bill shall not become operative.

SEC. 8. Section 4.5 of this bill incorporates amendments to Section 51.4 of the Civil Code proposed by both this bill and SB 1382. 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 51.4 of the Civil Code, and (3) this bill is enacted after SB 1382, in which case Section 4 of this bill shall not become operative.

SEC. 9. Section 5.5 of this bill incorporates amendments to Section 51.11 of the Civil Code proposed by both this bill and SB 1382. 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 51.11 of the Civil Code, and (3) this bill is enacted after SB 1382, in which case Section 5 of this bill shall not become operative.

CHAPTER 1005

An act to amend Sections 7001, 7002, 7003, 7007, 7011.7, 7065.05, and 7164 of, to amend and repeal Section 7000.5 of, to add Sections 7021 and 7159.3 to, and to add and repeal Section 7092 of, the Business and Professions Code, relating to contractors.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 30, 2000.]

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

SECTION 1. Section 7000.5 of the Business and Professions Code is amended to read:

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

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

SEC. 2. Section 7001 of the Business and Professions Code is amended to read:

7001. All members of the board, except the public members, shall be contractors actively engaged in the contracting business, have been so engaged for a period of not less than five years preceding the date of their appointment and shall so continue in the contracting business during the term of their office. No one, except a public member, shall be eligible for appointment who does not at the time hold an unexpired license to operate as a contractor.

The public members shall not be licentiates of the board.

SEC. 3. Section 7002 of the Business and Professions Code is amended to read:

7002. (a) One member of the board shall be a general engineering contractor, two members shall be general building contractors, two members shall be specialty contractors, one member shall be a member of a labor organization representing the building trades, one member shall be an active local building official, and eight members shall be public members, one of whom shall be from a statewide senior citizen organization.

(b) No public member shall be a current or former licensee of the board or a close family member of a licensee or be currently or formerly connected with the construction industry or have any financial interest in the business of a licensee of the board. Each public member shall meet all of the requirements for public membership on a board as set forth in Chapter 6 (commencing with Section 450) of Division 1. Notwithstanding the provisions of this subdivision and those of Section

450, a representative of a labor organization shall be eligible for appointment to serve as a public member of the board.

(c) Each contractor member of the board shall be of recognized standing in his or her branch of the contracting business and hold an unexpired license to operate as a contractor. In addition, each contractor member shall, as of the date of his or her appointment, be actively engaged in the contracting business and have been so engaged for a period of not less than five years. Each contractor member shall remain actively engaged in the contracting business during the entire term of his or her membership on the board.

(d) Each member of the board shall be at least 30 years of age and of good character. In addition, each member shall have been a citizen and resident of the State of California for at least five years next preceding his or her appointment.

(e) For the purposes of construing this article, the terms ''general engineering contractor,'' ''general building contractor,'' and ''specialty contractor'' shall have the meanings given in Article 4 (commencing with Section 7055) of this chapter.

SEC. 4. Section 7003 of the Business and Professions Code is amended to read:

7003. Except as otherwise provided, an appointment to fill a vacancy caused by the expiration of the term of office shall be for a term of four years and shall be filled, except for a vacancy in the term of a public member, by a member from the same branch of the contracting business as was the branch of the member whose term has expired. A vacancy in the term of a public member shall be filled by another public member. Each member shall hold office until the appointment and qualification of his or her successor or until the office is deemed to be vacant pursuant to Section 1774 of the Government Code, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint four of the public members, including the public member who is from a statewide senior citizen organization, the local building official, the member of a labor organization representing the building trades, and the five contractor members qualified as provided in Section 7002. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members.

SEC. 5. Section 7007 of the Business and Professions Code is amended to read:

7007. Eight members constitute a quorum at a board meeting.

Due notice of each meeting and the time and place thereof shall be given each member in the manner provided by the bylaws.

SEC. 6. Section 7011.7 of the Business and Professions Code is amended to read:

7011.7. (a) The registrar shall review and investigate complaints filed in a manner consistent with this chapter and the Budget Act. It is the intent of the Legislature that complaints be reviewed and investigated as promptly as resources allow.

(b) The board shall set as a goal the improvement of its disciplinary system so that an average of no more than six months elapses from the receipt of a complaint to the completion of an investigation.

(c) Notwithstanding subdivision (a), the goal for completing the review and investigation of complaints that, in the opinion of the board, involve complex fraud issues or complex contractual arrangements, should be no more than one year.

SEC. 7. Section 7021 is added to the Business and Professions Code, to read:

7021. The board shall conduct the following studies and reviews, and shall report to the department and the Legislature no later than October 1, 2001.

(a) The board shall conduct a comprehensive study of the issues surrounding home improvement contracts that involve home equity lending fraud and scams, and provide recommendations to deal with this problem.

(b) The board shall conduct a comprehensive study of its reorganization (''reengineering'') plan to restructure intake, mediation, and investigation services, and evaluate the impact this effort has had on consumer and industry access to board staff, its ability to reduce timeframes for complaint processing and investigations, increasing mediations, investigations, and legal actions, productivity of staff, and overall costs to the board.

(c) The board shall conduct a comprehensive study and review of recovery fund programs in California and other states which provide compensation to consumers for financial injury caused by a licensed professional. It should evaluate the effectiveness of these programs and whether such a recovery fund could benefit consumers who are harmed as a result of contractor fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts.

(d) The board shall conduct a comprehensive study in consultation with the Department of Insurance, on the use of surety bonds to compensate homeowners for financial injury sustained as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts. This study shall include consideration of the payout criteria of bonds, increasing the bond

amount, a ''step-bonding'' approach based on the amount of the prime contract, and the requirement of performance or payment bonds. This study shall additionally consider whether to require contractors to carry general liability insurance and whether to establish a guarantee program in order to provide the appropriate insurance and bond coverage in connection with a homeowner's employment of a contractor.

(e) The board shall review its current disclosure policy and provide recommended changes.

SEC. 8. Section 7065.05 of the Business and Professions Code is amended to read:

7065.05. (a) The board shall periodically review and, if needed, revise the contents of qualifying examinations to insure that the examination questions are timely and relevant to the business of contracting. The board shall, in addition, construct and conduct examinations in such a manner as to preclude the possibility of any applicant having prior knowledge of any specific examination question.

(b) The board shall establish a priority list and schedule for the completion of an occupational analysis of its current examinations. The board shall complete this analysis with respect to those examinations having the highest and moderately high need for revision by July 1, 2001, and complete this analysis with respect to all remaining examinations for revision by July 1, 2002.

SEC. 9. Section 7092 is added to the Business and Professions Code, to read:

7092. (a) (1) The director shall appoint a Contractors' State License Board Enforcement Program Monitor no later than January 31, 2001. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and familiarity with relevant administrative procedures.

(c) (1) The enforcement program monitor shall monitor and evaluate the Contractors' State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to,

improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than August 1, 2001, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) This section shall remain in effect only until January 31, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 31, 2003, deletes or extends that date.

SEC. 10. Section 7159.3 is added to the Business and Professions Code, to read:

7159.3. (a) A home improvement contract and an estimate for home improvement work shall be accompanied by and include all of the following:

(1) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner or tenant to verify the contractor's insurance coverage and status.

(2) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(3) A checklist prepared by the board through regulation setting forth the items that an owner contracting for home improvement should consider when reviewing a proposed home improvement contract.

(b) This section shall become operative three months after the board adopts the regulations referenced in paragraph (1) of subdivision (a).

SEC. 11. Section 7164 of the Business and Professions Code is amended to read:

7164. (a) Notwithstanding Section 7044, every contract and any changes in a contract, between an owner and a contractor, for the construction of a single-family dwelling to be retained by the owner for at least one year shall be evidenced in writing signed by both parties.

(b) The writing shall contain the following:

(1) The name, address, and license number of the contractor.

(2) The approximate dates when the work will begin and be substantially completed.

(3) A legal description of the location where the work will be done.

(4) The language of the notice required pursuant to Section 7018.5.

(5) (A) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner to verify the contractor's insurance coverage and status.

(B) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(c) The writing may also contain other matters agreed to by the parties to the contract. The writing shall be legible and shall clearly describe any other document which is to be incorporated into the contract. Prior to commencement of any work, the owner shall be furnished a copy of the written agreement, signed by the contractor. The provisions of this section are not exclusive and do not relieve the contractor from compliance with all other applicable provisions of law.

(d) Every contract subject to the provisions of this section shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point bold type or in all capital letters, stating that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner.

(e) The requirements in paragraphs (5) of subdivision (b) shall become operative three months after the board adopts the regulations referenced in subparagrah (A) of paragraph (5) of subdivision (b).

CHAPTER 1006

An act to amend Sections 6706, 6710, 6712, 6714, 6717, 6730.2, 6735, 6735.3, 6735.4, 6738, 6741, 6755.1, 6756, 6760, 6776, 6787, 8708, 8729, 8741.1, 8747, 8751, 8753, 8773.4, 8775, 8781, and 8792 of, to add Sections 6704.1, 6731.5, 6731.6, 6763.1, 6775.1, and 8780.1 to, and to repeal Sections 6735.2 and 6755.2 of, the Business and Professions Code, relating to professional engineers and land surveyors.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 6704.1 is added to the Business and Professions Code, to read:

6704.1. (a) The Department of Consumer Affairs, in conjunction with the board, and the Joint Legislative Sunset Review Committee shall review the engineering branch titles specified in Section 6732 to determine whether certain title acts should be eliminated from this chapter, retained, or converted to practice acts similar to civil, electrical, and mechanical engineering, and whether supplemental engineering work should be permitted for all branches of engineering. The department shall contract with an independent consulting firm to perform this comprehensive analysis of title act registration.

(b) The independent consultant shall perform, but not be limited to, the following: (1) meet with representatives of each of the engineering branches and other professional groups; (2) examine the type of services and work provided by engineers in all branches of engineering and interrelated professions within the marketplace, to determine the interrelationship that exists between the various branches of engineers and other interrelated professions; (3) review and analyze educational requirements of engineers; (4) identify the degree to which supplemental or ''overlapping'' work between engineering branches and interrelated professions occurs; (5) review alternative methods of regulation of engineers in other states and what impact the regulations would have if adopted in California; (6) identify the manner in which local and state agencies utilize regulations and statutes to regulate engineering work; and, (7) recommend changes to existing laws regulating engineers after

considering how these changes may effect the health, safety, and welfare of the public.

(c) The board shall reimburse the department for costs associated with this comprehensive analysis. The department shall report its findings and recommendations to the Legislature by September 1, 2001.

SEC. 2. Section 6706 of the Business and Professions Code is amended to read:

6706. (a) An engineer who voluntarily, without compensation or expectation of compensation, provides structural inspection services at the scene of a declared national, state, or local emergency caused by a flood, riot, fire, or earthquake at the request of a public official, public safety officer, or city or county building inspector acting in an official capacity shall not be liable in negligence for any personal injury, wrongful death, or property damage caused by the engineer's good faith but negligent inspection of a structure used for human habitation or owned by a public entity for structural integrity or nonstructural elements affecting life and safety.

The immunity provided by this section shall apply only for an inspection that occurs within 30 days of the declared emergency.

Nothing in this section shall provide immunity for gross negligence or willful misconduct.

(b) As used in this section:

(1) ''Engineer'' means a person registered under this chapter as a professional engineer, including any of the branches thereof.

(2) ''Public safety officer'' has the meaning given in Section 3301 of the Government Code.

(3) ''Public official'' means a state or local elected officer.

SEC. 3. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

(c) This section shall become inoperative on July 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 4. Section 6712 of the Business and Professions Code is amended to read:

6712. All appointments to the board shall be for a term of four years. Vacancies shall be filled by appointment for the unexpired term. Each appointment thereafter shall be for a four-year term expiring on June 1 of the fourth year following the year in which the previous term expired.

Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint professional members so that one is licensed to practice engineering as a civil engineer, one as an electrical engineer, one as a mechanical engineer, another is authorized to use the title of structural engineer, and one is a member of one of the remaining branches of engineering. One of the professional members registered under this chapter shall be from a local public agency, and one shall be from a state agency.

The Governor shall appoint five of the public members and the professional members qualified as provided in Section 6711. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 5. Section 6714 of the Business and Professions Code is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

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

SEC. 6. Section 6717 of the Business and Professions Code is amended to read:

6717. The board may, by regulation, define the scope of each branch of professional engineering other than civil, electrical, and mechanical engineering for which registration is provided under this chapter.

SEC. 7. Section 6730.2 of the Business and Professions Code is amended to read:

6730.2. It is the intent of the Legislature that the registration requirements which are imposed upon private sector professional engineers and engineering partnerships, firms, or corporation shall be imposed upon the state and any city, county, or city and county which shall adhere to those requirements. Therefore, for the purposes of Section 6730 and this chapter, at least one registered engineer shall be

designated the person in responsible charge of professional engineering work for each branch of professional engineering practiced in any department or agency of the state, city, county, or city and county.

Any department or agency of the state or any city, county, or city and county which has an unregistered person in responsible charge of engineering work on January 1, 1985, shall be exempt from this requirement until that time as the person currently in responsible charge is replaced.

SEC. 8. Section 6731.5 is added to the Business and Professions Code, to read:

6731.5. (a) Electrical engineering is that branch of professional engineering described in Section 6734.1 that embraces studies or activities relating to the generation, transmission, and utilization of electrical energy, including the design of electrical, electronic, and magnetic circuits, and the technical control of their operation and of the design of electrical gear. It is concerned with the research, organizational, and economic aspects of the above.

(b) The design of electronic and magnetic circuits is not exclusive to the practice of electrical engineering, as defined in subdivision (a).

SEC. 9. Section 6731.6 is added to the Business and Professions Code, to read:

6731.6. Mechanical engineering is that branch of professional engineering described in Section 6734.2 that deals with engineering problems relating to generation, transmission, and utilization of energy in the thermal or mechanical form and also with engineering problems relating to the production of tools, machinery, and their products, and to heating, ventilation, refrigeration, and plumbing. It is concerned with the research, design, production, operational, organizational, and economic aspects of the above.

SEC. 10. Section 6735 of the Business and Professions Code is amended to read:

6735. (a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as ''documents'') shall be prepared by, or under the responsible charge of, a registered civil engineer, and shall include his or her license number. Interim documents shall include a notation as to the intended purpose of the document, such as ''preliminary,'' ''not for construction,'' ''for plan check only,'' or ''for review only.'' All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the certificate or authority. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of

the certificate or authority. If civil engineering plans are required to be signed and stamped or sealed and have multiple sheets, the signature, seal or stamp, date of signing and sealing or stamping, and expiration date of the certificate or authority shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal, or stamp, date of signing and sealing or stamping, and expiration date of the certificate or authority shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a registered civil engineer who signs civil engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the registered engineer who originally signed the documents, provided that the engineering service rendered by the civil engineer who signed the documents was not also a proximate cause of the damage.

SEC. 11. Section 6735.2 of the Business and Professions Code is repealed.

SEC. 12. Section 6735.3 of the Business and Professions Code is amended to read:

6735.3. (a) All electrical engineering plans, specifications, calculations, and reports (hereinafter referred to as ''documents'') prepared by, or under the responsible charge of a registered electrical engineer shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as ''preliminary,'' ''not for construction,'' ''for plan check only,'' or ''for review only.'' All electrical engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the registration. All final electrical engineering calculations and reports shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the registration. If electrical engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, date of signing and sealing or stamping, and the expiration date of the certificate of registration shall appear on each sheet of the plans.

(b) Notwithstanding subdivision (a), a registered electrical engineer who signs electrical engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the registered engineer who originally signed the documents, provided that

the engineering service rendered by the electrical engineer who signed the documents was not also a proximate cause of the damage.

SEC. 13. Section 6735.4 of the Business and Professions Code is amended to read:

6735.4. (a) All mechanical engineering plans, specifications, calculations, and reports (hereinafter referred to as ''documents'') prepared by, or under the responsible charge of, a registered mechanical engineer shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as ''preliminary,'' ''not for construction,'' ''for plan check only,'' or ''for review only.'' All mechanical engineering plans and specifications shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the registration. All final mechanical engineering calculations and reports shall bear the signature and seal or stamp of the registrant, the date of signing and sealing or stamping, and the expiration date of the registration. If mechanical engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, date of signing and sealing or stamping, and the expiration date of the certificate of registration shall appear on the plans. If mechanical engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal, or stamp, date of signing and sealing or stamping, and expiration date of the certificate or authority shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a registered mechanical engineer who signs mechanical engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the registered engineer who originally signed the documents, provided that the engineering service rendered by the mechanical engineer who signed the documents was not also a proximate cause of the damage.

SEC. 14. Section 6738 of the Business and Professions Code is amended to read:

6738. (a) This chapter does not prohibit one or more civil, electrical, or mechanical engineers from practicing or offering to practice within the scope of their registration, civil, electrical, or mechanical engineering as a sole proprietorship, partnership, firm, or corporation (hereinafter called business), if all of the following requirements are met:

(1) A civil, electrical, or mechanical engineer currently registered in this state is an owner, part owner, or officer in charge of the engineering practice of the business.

(2) All engineering plans, specifications, reports, and documents are prepared under the responsible charge of a registered engineer in the appropriate branch of professional engineering.

(3) The business name of a California business shall only contain the name of any person who is registered by the board in a branch of professional engineering, a licensed land surveyor, a licensed architect, or a geologist registered under the Geologist Act (Chapter 12.5 (commencing with Section 7800)). Any offer, promotion, or advertisement by the business which contains the name of any individual in the business, other than by use of the name of an individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(b) An out-of-state business with a branch office in this state shall meet the requirements of subdivision (a) and shall have a part owner or officer who is in charge of the engineering work in the branch in this state, who is registered in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of any person not registered in this state if that person is appropriately registered in another state. Any offer, promotion, or advertisement which contains the name of any individual in the business, other than by use of the names of the individuals in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(c) A fictitious name may be used for an engineering business if (1) the name does not conflict with paragraph (3) of subdivision (a) requiring that names used in the business name shall be appropriately registered individuals, and (2) an organization record form is filed with the board.

(d) A nonregistered person may also be a part owner or an officer of a civil, electrical, or mechanical engineering business if the requirements of subdivision (a) are met.

(e) This chapter does not prevent an individual or business engaged in any line of endeavor other than the practice of civil, electrical, or mechanical engineering from employing or contracting with a registered civil, electrical, or mechanical engineer to perform the respective engineering services incidental to the conduct of business.

(f) This section shall not prevent the use of the name of any business engaged in rendering civil, electrical, or mechanical engineering services, including the use by any lawful successor or survivor, which lawfully was in existence on December 31, 1987. However, the business is subject to paragraphs (1) and (2) of subdivision (a), and the business

shall file an organization record form with the board as designated by board rule.

(g) A business engaged in rendering civil, electrical, or mechanical engineering services may use in its name the name of a deceased or retired person provided all of the following conditions are satisfied:

(1) The person's name had been used in the name of the business, or a predecessor in interest of the business, prior to and after the death or retirement of the person.

(2) The person shall have been an owner, part owner, or officer of the business, or an owner, part owner, or officer of the predecessor in interest of the business.

(3) The person shall have been licensed as a professional engineer, or a land surveyor, or an architect, or a geologist, (A) by the appropriate licensing board if that person is operating a place of business or practice in this state, or (B) by the applicable state board in the event no place of business existed in this state.

(4) The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another professional engineering business in this state during the period of the consent. However, the retired person may use his or her name as the name of a new or purchased business if it is not identical in every respect to that person's name as used in the former business.

(5) The business shall be subject to the provisions of paragraphs (1) and (2) of subdivision (a).

(6) The business files a current organization record form with the board.

(h) This section does not affect the provisions of Sections 6731.2 and 8726.1.

SEC. 15. Section 6741 of the Business and Professions Code is amended to read:

6741. Any person, firm, partnership, or corporation is exempt from registration under the provisions of this chapter who meets all the following:

(a) Is a nonresident of the State of California.

(b) Is legally qualified in another state to practice as a civil, electrical, or mechanical engineer.

(c) Does not maintain a regular place of business in this state.

(d) Offers to but does not practice civil, electrical, or mechanical engineering in this state.

SEC. 16. Section 6755.1 of the Business and Professions Code is amended to read:

6755.1. (a) The second division of the examination for registration as a professional engineer shall include questions to test the applicant's knowledge of state laws and the board's rules and regulations regulating

the practice of professional engineering. The board shall prepare and distribute to applicants for the second division of the examination, a plain language pamphlet describing the provisions of this chapter and the board's rules and regulations regulating the practice of professional engineering in this state. The board shall administer the test on state laws and board rules regulating the practice of engineering in this state as a separate part of the second division of the examination for registration as a professional engineer.

(b) On and after April 1, 1988, the second division of the examination for registration as a civil engineer shall also include questions to test the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1. No registration for a civil engineer shall be issued by the board on or after January 1, 1988, to any applicant unless he or she has successfully completed questions to test his or her knowledge of seismic principles and engineering surveying principles.

The board shall administer the questions to test the applicant's knowledge of seismic principles and engineering surveying principles as a separate part of the second division of the examination for registration as a civil engineer.

It is the intent of the Legislature that this section confirm the authority of the board to issue registrations prior to April 1, 1988, to applicants based on examinations not testing the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1.

SEC. 17. Section 6755.2 of the Business and Professions Code is repealed.

SEC. 18. Section 6756 of the Business and Professions Code is amended to read:

6756. (a) An applicant for certification as an engineer-in-training shall, upon making a passing grade in that division of the examination prescribed in Section 6755 of this chapter, relating to fundamental engineering subjects, be issued a certificate as an engineer-in-training. No renewal or other fee, other than the application fee, shall be charged for this certification. The certificate shall become invalid when the holder has qualified as a professional engineer as provided in Section 6762 of this chapter.

(b) An engineer-in-training certificate does not authorize the holder thereof to practice or offer to practice civil, electrical or mechanical engineering work, in his own right, or to use the titles specified in Sections 6732 and 6763.

(c) No person shall use the title of engineer-in-training, or any abbreviation of that title, unless he or she is the holder of a valid engineer-in-training certificate.

SEC. 19. Section 6760 of the Business and Professions Code is amended to read:

6760. A temporary authorization to practice engineering in a branch defined by this chapter may be granted for a specific project, upon application and payment of the fee prescribed in Section 6799, for a period not to exceed 180 consecutive days, if the applicant complies with all of the following:

(a) The applicant maintains no place of business in this state.

(b) The applicant is legally qualified to practice the branch of engineering in which he or she is seeking the temporary authorization in the state or country where he or she maintains a place of business.

(c) (1) The applicant, if applying for a temporary authorization to practice civil engineering, demonstrates by means of an individual appearance before the board satisfactory evidence of his or her knowledge of the application of seismic forces in the design of structures or adequate knowledge in any of the other phases of civil engineering as related to the specific project for which the temporary authorization is requested.

(2) The applicant, if applying for a temporary authorization to practice engineering in a branch defined by this chapter other than civil engineering, demonstrates by means of an individual appearance before the board, satisfactory evidence of his or her knowledge in the branch of professional engineering in which the applicant proposes to practice under the temporary authorization as related to the specific project for which the temporary authorization is requested.

(d) The applicant takes and passes the examination in the state laws and board rules described in Section 6755.1.

(e) The applicant notifies the board in writing of his or her intention to practice, stating the approximate date he or she intends to commence the specific project and the approximate duration of the specific project, which shall not exceed 180 consecutive days from the commencement date of the specific project.

Upon completion of the requirements, the executive officer, on the direction of the board, shall issue a temporary authorization to the applicant.

SEC. 20. Section 6763.1 is added to the Business and Professions Code, to read:

6763.1. An applicant to use the title ''structural engineer'' shall have successfully passed a written examination that incorporates a national examination for structural engineering by a nationally recognized entity approved by the board, if available, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of state laws, rules, and regulations, and of seismicity and structural engineering unique to

practice in this state. The board shall use the national examination on or before December 31, 2004.

SEC. 21. Section 6775.1 is added to the Business and Professions Code, to read:

6775.1. The board may receive and investigate complaints against engineers-in-training, and make findings thereon.

By a majority vote, the board may revoke the certificate of any engineer-in-training:

(a) Who has been convicted of a crime as defined in subdivision (a) of Section 480.

(b) Who has been found guilty of any fraud, deceit, or misrepresentation in obtaining his or her engineer-in-training certificate or certificate of registration, certification, or authority as a professional engineer.

(c) Who aids or abets any person in the violation of any provision of this chapter.

(d) Who violates Section 119 with respect to an engineer-in-training certificate or commits any act described in Section 6787.

(e) Who violates any provision of this chapter.

SEC. 22. Section 6776 of the Business and Professions Code is amended to read:

6776. The proceedings under this article shall be conducted in accordance with Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

SEC. 23. Section 6787 of the Business and Professions Code is amended to read:

6787. Every person is guilty of a misdemeanor:

(a) Who, unless he or she is exempt from registration under this chapter, practices or offers to practice civil, electrical, or mechanical engineering in this state according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his or her own the certificate of registration of a licensed professional engineer unless he or she is the person named on the certificate of registration.

(c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.

(d) Who impersonates or uses the seal of a licensed professional engineer.

(e) Who uses an expired, suspended, or revoked certificate issued by the board.

(f) Who represents himself or herself as, or uses the title of, registered civil, electrical, or mechanical engineer, or any other title whereby that

person could be considered as practicing or offering to practice civil, electrical, or mechanical engineering in any of its branches, unless he or she is correspondingly qualified by registration as a civil, electrical, or mechanical engineer under this chapter.

(g) Who, unless appropriately registered, manages, or conducts as manager, proprietor, or agent, any place of business from which civil, electrical, or mechanical engineering work is solicited, performed, or practiced, except as authorized pursuant to subdivision (d) of Section 6738 and Section 8726.1.

(h) Who uses the title, or any combination of that title, of ''professional engineer,'' ''licensed engineer,'' ''registered engineer,'' or the branch titles specified in Section 6732, or the authority titles specified in Section 6763, or ''engineer-in-training,'' or who makes use of any abbreviation of that title that might lead to the belief that he or she is a registered engineer or holds a certificate as an engineer-in-training, without being registered or certified as required by this chapter.

(i) Who uses the title ''consulting engineer'' without being registered as required by this chapter or without being authorized to use that title pursuant to legislation enacted at the 1963, 1965 or 1968 Regular Session.

(j) Who violates any provision of this chapter.

SEC. 24. Section 8708 of the Business and Professions Code is amended to read:

8708. In order to safeguard property and public welfare, no person shall practice land surveying unless appropriately licensed or specifically exempted from licensure under this chapter, and only persons licensed under this chapter shall be entitled to take and use the titles ''licensed land surveyor,'' ''professional land surveyor,'' or ''land surveyor,'' or any combination of these words, phrases, or abbreviations thereof.

SEC. 25. Section 8729 of the Business and Professions Code is amended to read:

8729. (a) This chapter does not prohibit one or more licensed land surveyors or civil engineers registered in this state prior to 1982 (hereinafter called civil engineers) from practicing or offering to practice within the scope of their licensure, land surveying as a sole proprietorship, partnership, firm, or corporation (hereinafter called business), if the following conditions are satisfied:

(1) A land surveyor or civil engineer currently licensed in the state is an owner, part owner, or officer in charge of the land surveying practice of the business.

(2) All maps, plats, reports, descriptions, or other documents are prepared under the responsible charge of a land surveyor or civil engineer.

(3) The business name of a California business shall only contain the name of a person licensed by the board as a land surveyor or registered by the board in any year as a civil engineer. Any offer, promotion, or advertisement by the business which contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(b) An out-of-state business with a branch office in this state shall meet the requirements of subdivision (a) and shall have a part owner or officer who is in charge of the land surveying work in this state, who is licensed in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of a person not licensed in this state, if that person is appropriately licensed in another state. Any offer, promotion, or advertisement which contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(c) A fictitious name may be used for a land surveying business if (1) the name does not conflict with the provisions of paragraph (3) of subdivision (a) requiring that a name used in the business name shall be that of an appropriately licensed individual, and (2) an organization record is filed with the board.

(d) A nonregistered person may also be a part owner or an officer of a land surveying business if the conditions of subdivision (a) are satisfied.

(e) This chapter does not prevent an individual or business engaged in any line of endeavor, other than the practice of land surveying, from employing or contracting with a licensed land surveyor or a registered civil engineer to perform the respective land surveying services incidental to the conduct of business.

(f) This section shall not prevent the use of the name of any business engaged in rendering land surveying services, including the use by any lawful successor or survivor, which lawfully was in existence on June 1, 1941. However, the business is subject to the provisions of paragraphs (1) and (2) of subdivision (a) and the business shall file an organization record form with the board as designated by board rule.

(g) A business engaged in rendering land surveying services may use in its name the name of a deceased or retired person if the following conditions are satisfied:

(1) The person's name had been used in the name of the business, or a predecessor in interest of the business, prior to the death or retirement of the person.

(2) The person shall have been an owner, part owner, or officer of the business, or an owner, part owner, or officer of the predecessor in interest of the business.

(3) The person shall have been licensed as a land surveyor or a civil engineer by the board, if operating a place of business or practice in this state, or by an applicable state board in the event no place of business existed in this state.

(4) The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another land surveying business in this state during the period of that consent, except that a retired person may use his or her name as the name of a new or purchased business, if that business is not identical in every respect to that person's name as used in the former business.

(5) The business shall be subject to paragraphs (1) and (2) of subdivision (a).

(6) The business files a current organization record form with the board.

(h) This section does not affect Sections 6731.2 and 8726.1.

SEC. 26. Section 8741.1 of the Business and Professions Code is amended to read:

8741.1. The second division of the examination for licensure as a land surveyor shall include an examination that incorporates a national examination for land surveying by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of the provisions of this chapter and the board's rules and regulations regulating the practice of professional land surveying in this state. The board shall prepare and distribute to applicants for the second division of the examination a plain language pamphlet describing the provisions of this chapter and the board's rules and regulations regulating the practice of land surveying in the state.

The board shall use the national examination on or before April 1, 2003. In the meantime, the board may continue to provide the current state-only second division examination and administer the test on the provisions of this chapter and board rules as a separate part of the second division examination for licensure as a land surveyor.

SEC. 27. Section 8747 of the Business and Professions Code is amended to read:

8747. Any applicant who has passed the examinations prescribed by the board shall have a suitable license issued to him or her.

(a) An applicant who has passed the first division of the examination shall be issued a certificate as a land surveyor-in-training. No renewal or other fee, other than the application fee, shall be charged for this certification. This certificate shall become invalid upon the person

passing the second division of the examination and being issued a license as a land surveyor, as provided in subdivision (b). A land surveyor-in-training certificate shall not authorize the holder thereof to practice or offer to practice land surveying. No person shall use the title of land surveyor-in-training, or any abbreviation of this title, unless he or she is the holder of a valid land surveyor-in-training certificate.

(b) An applicant who has passed the second division of the examination shall be issued a license as a land surveyor. The license shall authorize him or her to practice as a land surveyor.

SEC. 28. Section 8751 of the Business and Professions Code is amended to read:

8751. No person shall represent himself or herself as, or use the title of, or any abbreviation or combination of the words in the title of, professional land surveyor, licensed land surveyor, land surveyor, land survey engineer, survey engineer, geodetic engineer, or geometronic engineer unless he or she is the holder of a valid, unsuspended, and unrevoked license.

SEC. 29. Section 8753 of the Business and Professions Code is amended to read:

8753. A temporary authorization to practice as a professional land surveyor, as defined by this chapter, may be granted for a specific project, upon application and payment of the fee prescribed in Section 8805, for a period not to exceed 180 days, if the applicant complies with each of the following provisions:

(a) The applicant maintains no place of business in this state.

(b) The applicant is legally qualified to practice land surveying in the state or country where he or she maintains a place of business.

(c) The applicant demonstrates by means of an individual appearance before the board satisfactory evidence of his or her knowledge of the practice of land surveying in this state as related to the specific project for which the temporary authorization is requested.

(d) The applicant takes and passes the examination in the state laws and board rules described in Section 8741.1.

(e) The applicant notifies the board in writing of his or her intention to practice, stating the approximate date when he or she intends to commence the specific project and the approximate duration of the specific project, which shall not exceed 180 consecutive days from the commencement date of the specific project.

Upon completion of the requirements, the executive officer, on the direction of the board, shall issue a temporary authorization to the applicant.

SEC. 30. Section 8773.4 of the Business and Professions Code is amended to read:

8773.4. (a) No corner record shall be filed unless the same is signed by a licensed land surveyor or registered civil engineer and stamped with his or her seal, or in the case of an agency of the United States government or the State of California the certificate may be signed by the chief of the survey party making the survey, setting forth his or her official title.

(b) No corner record need be filed when:

(1) A corner record is on file and the corner is found as described in the existing corner record.

(2) All conditions of Section 8773 are complied with by proper notations on a record of survey map filed in compliance with the Land Surveyor's Act or a parcel or subdivision map, in compliance with the Subdivision Map Act.

(3) When the survey is a survey of a mobilehome park interior lot as defined in Section 18210 of the Health and Safety Code, provided that no subdivision map, official map, or record of survey has been previously filed for the interior lot or no conversion to residential ownership has occurred pursuant to Section 66428.1 of the Government Code.

This section shall not apply to maps filed prior to January 1, 1974.

SEC. 31. Section 8775 of the Business and Professions Code is amended to read:

8775. No person shall use the title or any abbreviation of the title photogrammetrist or photogrammetric surveyor unless he or she holds registration as a civil engineer or licensed land surveyor, or unless he or she is licensed as a photogrammetric surveyor.

SEC. 32. Section 8780.1 is added to the Business and Professions Code, to read:

8780.1. The board may receive and investigate complaints against land surveyors-in-training, and make findings thereon.

By a majority vote, the board may revoke the certificate of any land surveyor-in-training:

(a) Who has been convicted of a crime as defined in subdivision (a) of Section 480.

(b) Who has been found guilty of any fraud, deceit, or misrepresentation in obtaining his or her land surveyor-in-training certificate or license as a professional land surveyor.

(c) Who aids or abets any person in the violation of any provision of this chapter.

(d) Who violates Section 119 with respect to a land surveyor-in-training certificate or commits any act described in Section 8792.

(e) Any violation of any provision of this chapter.

SEC. 33. Section 8781 of the Business and Professions Code is amended to read:

8781. The proceedings under this article shall be conducted in accordance with Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

SEC. 34. Section 8792 of the Business and Professions Code is amended to read:

8792. Every person is guilty of a misdemeanor:

(a) Who, unless he or she is exempt from licensing under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.

(b) Who presents as his or her own the license of a professional land surveyor unless he or she is the person named on the license.

(c) Who attempts to file as his or her own any record of survey under the license of a professional land surveyor.

(d) Who gives false evidence of any kind to the board, or to any member, in obtaining a license.

(e) Who impersonates or uses the seal of a professional land surveyor.

(f) Who uses an expired, suspended, or revoked license.

(g) Who represents himself or herself as, or uses the title of, professional land surveyor, or any other title whereby that person could be considered as practicing or offering to practice land surveying, unless he or she is correspondingly qualified by licensure as a land surveyor under this chapter.

(h) Who uses the title, or any combination of that title, of ''professional land surveyor,'' ''licensed land surveyor,'' ''land surveyor,'' or the titles specified in Sections 8751 and 8775, or ''land surveyor-in-training,'' or who makes use of any abbreviation of that title that might lead to the belief that he or she is a licensed land surveyor or holds a certificate as a land surveyor-in-training, without being licensed or certified as required by this chapter.

(i) Who, unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (d) of Section 8729.

(j) Who violates any provision of this chapter.

SEC. 35. 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 1007

An act to amend Sections 8000, 8005, 8030.2, 8030.4, 8030.6, and 8030.8 of the Business and Professions Code, relating to shorthand reporting, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 8000 of the Business and Professions Code is amended to read:

8000. There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473), except that the review shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 2. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which

becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473), except that the review shall be limited to the board's examination program.

SEC. 3. Section 8030.2 of the Business and Professions Code is amended to read:

8030.2. (a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be established by a transfer of funds from the Court Reporters' Fund and shall be maintained in an amount no less than three hundred thousand dollars ($300,000) for each fiscal year.

(b) All moneys held in the Court Reporters' Fund on the effective date of this section in excess of the board's operating budget for the 1996–97 fiscal year shall be used as provided in subdivision (a).

(c) Refunds and unexpended funds that are anticipated to remain in the Transcript Reimbursement Fund at the end of the fiscal year shall be considered by the board in establishing the fee assessment pursuant to Section 8031 so that the assessment shall maintain the Transcript Reimbursement Fund at the appropriate level in the following fiscal year.

(d) The Transcript Reimbursement Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the Transcript Reimbursement Fund are continuously appropriated for the purposes of this chapter.

(e) Applicants who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or attorneys' fees by judgment or by settlement agreement, shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

(f) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(g) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of June 29, 2001, shall be transferred to the Court Reporters' Fund.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes

operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 8030.4 of the Business and Professions Code is amended to read:

8030.4. As used in this chapter:

(a) ''Qualified legal services project'' means a nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. Legal services projects funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(b) ''Qualified support center'' means an incorporated nonprofit legal services center, having an office or offices in California, which office or offices provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. Support centers funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(c) ''Other qualified project'' means a nonprofit organization formed for charitable or other public purposes, not receiving funds from the Legal Services Corporation or pursuant to the Older Americans Act, which organization or association provides free legal services to indigent persons.

(d) ''Pro bono attorney'' means any attorney, law firm, or legal corporation, licensed to practice law in this state, which undertakes without charge to the party the representation of an indigent person, referred by a qualified legal services project, qualified support center, or other qualified project, in a case not considered to be fee generating as defined in this chapter.

(e) ''Applicant'' means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter. The term ''applicant'' shall not include persons appearing pro se to represent themselves at any stage of the case.

(f) ''Indigent person'' means either a person whose income is 125 percent or less of the current poverty threshold established by the Office of Management and Budget of the United States, a disabled person whose income after meeting medical and other disability-related special expenses is 125 percent or less of that current poverty threshold, or a

person who receives or is eligible to receive supplemental security income.

(g) ''Fee-generating case'' means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from an opposing party. A reasonable expectation as to payment of a legal fee exists wherever a client enters into a contingent fee agreement with his or her lawyer. If there is no contingent fee agreement, a case is not considered fee generating if adequate representation is deemed to be unavailable because of the occurrence of any of the following circumstances:

(1) Where the applicant has determined that referral is not possible because of any of the following:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two private attorneys who have experience in the subject matter of the case.

(B) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee.

(C) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Where recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) Where a court appoints an applicant or an employee of an applicant pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) In any case involving the rights of a claimant under a public supported benefit program for which entitlement to benefit is based on need.

(h) ''Legal Services Corporation'' means the Legal Services Corporation established under the Legal Services Corporation Act of 1974, Public Law 93-355, as amended.

(i) ''Supplemental security income recipient'' means an individual receiving or eligible to receive payments under Title XVI of the Social Security Act, Public Law 92-603, as amended, or payment under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) ''Lawyer referral service'' means a lawyer referral program authorized by the State Bar of California pursuant to the rules of professional conduct.

(k) ''Older Americans Act'' means the Older Americans Act of 1965, Public Law 89-73, as amended.

(*l*) ''Rules of professional conduct'' means those rules adopted by the State Bar pursuant to Sections 6076 and 6077.

(m) ''Certified shorthand reporter'' means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(n) ''Case'' means a single legal proceeding from its inception, through all levels of hearing, trial, and appeal, until its ultimate conclusion and disposition.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4.5. Section 8030.4 of the Business and Professions Code is amended to read:

8030.4. As used in this chapter:

(a) ''Qualified legal services project'' means a nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. Legal services projects funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(b) ''Qualified support center'' means an incorporated nonprofit legal services center, having an office or offices in California, which office or offices provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. Support centers funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(c) ''Other qualified project'' means a nonprofit organization formed for charitable or other public purposes, not receiving funds from the Legal Services Corporation or pursuant to the Older Americans Act, which organization or association provides free legal services to indigent persons.

(d) ''Pro bono attorney'' means any attorney, law firm, or legal corporation, licensed to practice law in this state, which undertakes

without charge to the party the representation of an indigent person, referred by a qualified legal services project, qualified support center, or other qualified project, in a case not considered to be fee generating as defined in this chapter.

(e) ''Applicant'' means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter, whether or not the applicant is representing a person who appeared pro se at any other stage of the case. ''Applicant'' also includes an unrepresented indigent person.

(f) ''Indigent person'' means either a person whose income is 125 percent or less of the current poverty threshold established by the Office of Management and Budget of the United States, a disabled person whose income after meeting medical and other disability-related special expenses is 125 percent or less of that current poverty threshold, or a person who receives or is eligible to receive supplemental security income.

(g) ''Fee-generating case'' means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from an opposing party. A reasonable expectation as to payment of a legal fee exists wherever a client enters into a contingent fee agreement with his or her lawyer. If there is no contingent fee agreement, a case is not considered fee generating if adequate representation is deemed to be unavailable because of the occurrence of any of the following circumstances:

(1) Where the applicant has determined that referral is not possible because of any of the following:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two private attorneys who have experience in the subject matter of the case.

(B) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee.

(C) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Where recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief; or inclusion of a counterclaim requesting

damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) Where a court appoints an applicant or an employee of an applicant pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) In any case involving the rights of a claimant under a public supported benefit program for which entitlement to benefit is based on need.

(h) ''Legal Services Corporation'' means the Legal Services Corporation established under the Legal Services Corporation Act of 1974, Public Law 93-355, as amended.

(i) ''Supplemental security income recipient'' means an individual receiving or eligible to receive payments under Title XVI of the Social Security Act, Public Law 92-603, as amended, or payment under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) ''Lawyer referral service'' means a lawyer referral program authorized by the State Bar of California pursuant to the rules of professional conduct.

(k) ''Older Americans Act'' means the Older Americans Act of 1965, Public Law 89-73, as amended.

(*l*) ''Rules of professional conduct'' means those rules adopted by the State Bar pursuant to Sections 6076 and 6077.

(m) ''Certified shorthand reporter'' means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(n) ''Case'' means a single legal proceeding from its inception, through all levels of hearing, trial, and appeal, until its ultimate conclusion and disposition.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 8030.6 of the Business and Professions Code is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If no deposition transcript is ordered, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed

seventy-five dollars ($75) for a half day, or one hundred twenty-five dollars ($125) for a full day. In the event that a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem shall be deducted from the amount of transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter's invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

(1) Regular customary charges for preparation of original deposition transcripts and one copy thereof, or a copy of the transcripts.

(2) Regular customary charges for expedited deposition transcripts up to a maximum of two thousand five hundred dollars ($2,500) per case.

(3) Regular customary charges for the preparation of original transcripts and one copy thereof, or a copy of transcripts of court proceedings.

(4) Regular customary charges for expedited or daily charges for preparation of original transcripts and one copy thereof or a copy of transcripts of court proceedings.

(5) The charges may not include notary or handling fees. The charges may include actual shipping costs and exhibits, except that the cost of exhibits may not exceed thirty-five cents ($0.35) each or a total of thirty-five dollars ($35) per transcript.

(c) The maximum amount reimbursable by the fund under subdivision (b) may not exceed twenty thousand dollars ($20,000) per case per year.

(d) If entitled, and funds are available, the board shall forthwith disburse the appropriate sum to the applicant or the certified shorthand reporter when documentation as provided in subdivision (d) of Section 8030.8 accompanies the application. A notice shall be sent to the recipient requiring the recipient to file a notice with the court in which the action is pending stating the sum of reimbursement paid pursuant to this section. The notice filed with the court shall also state that if the sum is subsequently included in any award of costs made in the action, that the sum is to be ordered refunded by the applicant to the Transcript Reimbursement Fund whenever the sum is actually recovered as costs. The court may not consider whether payment has been made from the Transcript Reimbursement Fund in determining the appropriateness of any award of costs to the parties. The board shall also forthwith notify

the applicant that the reimbursed sum has been paid to the certified shorthand reporter and shall likewise notify the applicant of the duty to refund any of the sum actually recovered as costs in the action.

(e) If not entitled, the board shall forthwith return a copy of the invoice to the applicant and the designated certified shorthand reporter together with a notice stating the grounds for denial.

(f) The board shall complete its actions under this subdivision within 30 days of receipt of the invoice and all required documentation, including a completed application.

(g) Applications for reimbursements from the fund shall be filled on a first-come basis.

(h) Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5.5. Section 8030.6 of the Business and Professions Code is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If no deposition transcript is ordered, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed seventy-five dollars ($75) for a half day, or one hundred twenty-five dollars ($125) for a full day. In the event that a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem shall be deducted from the amount of transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter's invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

(1) Regular customary charges for preparation of original deposition transcripts and one copy thereof, or a copy of the transcripts.

(2) Regular customary charges for expedited deposition transcripts up to a maximum of two thousand five hundred dollars ($2,500) per case.

(3) Regular customary charges for the preparation of original transcripts and one copy thereof, or a copy of transcripts of court proceedings.

(4) Regular customary charges for expedited or daily charges for preparation of original transcripts and one copy thereof or a copy of transcripts of court proceedings.

(5) The charges may not include notary or handling fees. The charges may include actual shipping costs and exhibits, except that the cost of exhibits may not exceed thirty-five cents ($0.35) each or a total of thirty-five dollars ($35) per transcript.

(c) The maximum amount reimbursable by the fund under subdivision (b) may not exceed twenty thousand dollars ($20,000) per case per year. For an applicant who appears pro se and is not represented by a qualified legal services project, qualified support center, other qualified project, or pro bono attorney, the maximum amount reimbursable by the fund under subdivision (b) may not exceed one thousand dollars ($1,000) per year.

(d) If entitled, and funds are available, the board shall forthwith disburse the appropriate sum to the applicant or the certified shorthand reporter when documentation as provided in subdivision (d) of Section 8030.8 accompanies the application. A notice shall be sent to the recipient requiring the recipient to file a notice with the court in which the action is pending stating the sum of reimbursement paid pursuant to this section. The notice filed with the court shall also state that if the sum is subsequently included in any award of costs made in the action, that the sum is to be ordered refunded by the applicant to the Transcript Reimbursement Fund whenever the sum is actually recovered as costs. The court may not consider whether payment has been made from the Transcript Reimbursement Fund in determining the appropriateness of any award of costs to the parties. The board shall also forthwith notify the applicant that the reimbursed sum has been paid to the certified shorthand reporter and shall likewise notify the applicant of the duty to refund any of the sum actually recovered as costs in the action.

(e) If not entitled, the board shall forthwith return a copy of the invoice to the applicant and the designated certified shorthand reporter together with a notice stating the grounds for denial.

(f) The board shall complete its actions under this subdivision within 30 days of receipt of the invoice and all required documentation, including a completed application.

(g) Applications for reimbursements from the fund shall be filled on a first-come basis.

(h) Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 8030.8 of the Business and Professions Code is amended to read:

8030.8. (a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons.

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorneys' fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

(7) The certified shorthand reporter's invoice for transcripts shall include separate itemizations of charges claimed, as follows:

(A) Total charges and rates for customary services in preparation of an original transcript and one copy or a copy of the transcript of depositions.

(B) Total charges and rates for expedited deposition transcripts.

(C) Total charges and rates in connection with transcription of court proceedings.

(b) For an applicant claiming to be eligible pursuant to subdivision (a), (b), or (c) of Section 8030.4, a letter from the director of the project or center, certifying that the project or center meets the standards set forth in one of those subdivisions and that the litigant or litigants are indigent persons, is sufficient documentation to establish eligibility.

(c) For an applicant claiming to be eligible pursuant to subdivision (d) of Section 8030.4, a letter certifying that the applicant meets the requirements of that subdivision, that the case is not a fee-generating case, as defined in subdivision (g) of Section 8030.4, and that the litigant or litigants are indigent persons, together with a letter from the director of a project or center defined in subdivision (a), (b), or (c) of Section 8030.4 certifying that the litigant or litigants had been referred by that project or center to the applicant, is sufficient documentation to establish eligibility.

(d) The applicant may receive reimbursement directly from the board when the applicant has previously paid the certified shorthand reporter for transcripts as provided in Section 8030.6. To receive payment directly, the applicant shall submit, in addition to all other required documentation, an itemized statement signed by the certified shorthand reporter performing the services that describes payment for transcripts in accordance with the requirements of Section 8030.6.

(e) The board may prescribe appropriate forms to be used by applicants and certified reporters to facilitate these requirements.

(f) This chapter does not restrict the contractual obligation or payment for services, including, but not limited to, billing the applicant directly, during the pendency of the claim.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 8030.4 of the Business and Professions Code proposed by both this bill and SB 449. 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 8030.4 of the Business and Professions Code, and (3) this bill is enacted after SB 449, in which case Section 4 of this bill shall not become operative.

SEC. 8. Section 5.5 of this bill incorporates amendments to Section 8030.6 of the Business and Professions Code proposed by both this bill and SB 449. 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 8030.6 of the Business and Professions Code, and (3) this bill is enacted after SB 449, in which case Section 5 of this bill shall not become operative.

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CHAPTER 1008

An act to amend Section 1808.21 of the Vehicle Code, relating to information practices.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 1808.21 of the Vehicle Code is amended to read:

1808.21. (a) Any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency, or as authorized in Section 1808.22 or 1808.23.

(b) Release of any mailing address or part thereof in any record of the department may be restricted to a release for purposes related to the reasons for which the information was collected, including, but not limited to, the assessment of driver risk, or ownership of vehicles or vessels. This restriction does not apply to a release to a court, a law enforcement agency, or other governmental agency, or a person who has been issued a requester code pursuant to Section 1810.2.

(c) Any person providing the department with a mailing address shall declare, under penalty of perjury, that the mailing address is a valid, existing, and accurate mailing address and shall consent to receive service of process pursuant to subdivision (b) of Section 415.20, subdivision (a) of Section 415.30, and Section 416.90 of the Code of Civil Procedure at the mailing address.

(d) (1) Any registration or driver's license record of a person may be suppressed from any other person, except those persons specified in subdivision (a), if the person requesting the suppression submits verification acceptable to the department that he or she has reasonable cause to believe either of the following:

(A) That he or she is the subject of stalking, as specified in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code.

(B) That there exists a threat of death or great bodily injury to his or her person, as defined in subdivision (d) of Section 12022.7 of the Penal Code.

(2) Upon suppression of a record, each request for information about that record shall be authorized by the subject of the record or verified as legitimate by other investigative means by the department before the information is released.

(e) Suppression of a record pursuant to subdivision (d) shall occur for one year after approval by the department. Not less than 60 days prior

to the date the suppression of the record would otherwise expire, the department shall notify the subject of the record of its impending expiration. The suppression may be continued for two additional periods of one year each if a letter is submitted to the department stating that the person continues to have a reasonable cause to believe that he or she is the subject of stalking or that there exists a threat of death or great bodily injury as described in subparagraph (B) of paragraph (1) of subdivision (d). The suppression may be additionally continued at the end of the second one-year period by submitting verification acceptable to the department. The notification described in this subdivision shall instruct the person of the method to reapply for record suppression.

(f) For the purposes of subdivisions (d) and (e), ''verification acceptable to the department'' means recent police reports, court documentation, or other documentation from a law enforcement agency.

CHAPTER 1009

An act to amend Sections 8017 and 8027 of the Business and Professions Code, relating to shorthand reporters.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 8017 of the Business and Professions Code is amended to read:

8017. The practice of shorthand reporting is defined as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner and the accurate transcription thereof. Nothing in this section shall require the use of a certified shorthand reporter when not otherwise required by law.

SEC. 2. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, ''school'' means a court reporter training program or an institution that provides a course of instruction approved by the board, and is approved by the Council for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections

8016 and 8017. Its educational program shall be on the postsecondary or collegiate level, and shall be a residence program; its educational program shall not be a correspondence program. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student, apprenticeship and graduation reports, high school transcripts or equivalent, or self-certification of high school graduation or equivalency, transcript of other education, and student progress to date.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice to, or seeks approval from, the California Department of Education, the Council for Private Postsecondary and Vocational Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges, whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with the requirements of this section.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center, or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. All of these notifications shall be made in writing.

(g) A school shall notify the board in writing immediately of the discontinuance or pending discontinuance of its court reporting program or any of the program's components. Within two years of the date this notice is sent to the board, the school shall discontinue its court reporting program in its entirety. The board may, for good cause shown, grant not more than two, one-year extensions of this period to a school. If a student is to be enrolled after this notice is sent to the board, a school shall disclose to the student the fact of the discontinuance or pending discontinuance of its court reporting program or any of its program components.

(h) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(i) The board shall maintain statistics which display the number and passing percentage of all first-time examinees, including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(j) Inspections and investigations shall be conducted by the board as necessary to carry out this section.

(k) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

''IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER).''

(*l*) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog which shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no

catalog need be sent. In addition, each school shall also file with the board a statement certifying that the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

(m) No school offering court reporting shall make any written or verbal claims of employment opportunities or potential earnings unless those claims are based on verified data and reflect current employment conditions.

(n) Any person teaching an academic course, that is a course other than machine shorthand or typing, in a court reporting program shall meet one of the following criteria:

(1) Possess a minimum of an Associate of Arts degree and, in addition, either a minimum of two years of experience teaching the subject being taught or at least two years' work experience in a job substantially related to the subject being taught.

(2) Possess a current license as a certified shorthand reporter and, in addition, either a minimum of two years of experience teaching the subject being taught or at least two years' work experience in a job substantially related to the subject being taught.

(3) Possess a minimum of four years' experience teaching the subject being taught or a minimum of four years' work experience in a job substantially related to the subject being taught.

(4) Possess a minimum of a Bachelor of Arts or Bachelor of Science degree in the subject being taught.

(o) The pass rate of first-time exam takers for each school offering court reporting shall meet or exceed the average pass rate of all first-time test takers for a majority of examinations given for the preceding three years. Failure to do so shall require the board to conduct a review of the program. In addition, the board may place the school on probation and may withdraw recognition if the school continues to place below the above described standard on the two exams that follow the three-year period.

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 1010

An act to amend Sections 3501.5, 20028, 20474, 20570, 20815, 22754, and 70218 of, and to add Sections 20069.1, 20460.1, 20469.1, 20471.1, and 68656 to, to add Chapter 7 (commencing with Section 71600) to Title 8 of, to repeal Section 3501.6 of, and to repeal Chapter 2.1 (commencing with Section 68650) of Title 8 of, the Government Code, relating to courts, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 3501.5 of the Government Code is amended to read:

3501.5. As used in this chapter, ''public agency'' does not mean a superior court or municipal court.

SEC. 2. Section 3501.6 of the Government Code is repealed.

SEC. 3. Section 20028 of the Government Code is amended to read:

20028. ''Employee'' means:

(a) Any person in the employ of the state (etc, as in stats), a county superintendent of schools, or the university whose compensation, or at least that portion of his or her compensation that is provided by the state, a county superintendent of schools, or the university, is paid out of funds directly controlled by the state, a county superintendent of schools, or the university, excluding all other political subdivisions, municipal, public and quasi-public corporations. ''Funds directly controlled by the state'' includes funds deposited in and disbursed from the State Treasury in payment of compensation, regardless of their source.

(b) Any person in the employ of any contracting agency.

(c) City employees who prior to the effective date of the contract with the hospital are assigned to a hospital that became a contracting agency because of subdivision (p) of Section 20057 shall be deemed hospital employees from and after the effective date of the contract with the hospital for retirement purposes. City employees who after the effective date of the contract with the hospital become employed by the hospital, shall be considered as new employees of the hospital for retirement purposes.

(d) Any person in the employ of a school employer.

(e) Public health department or district employees who were employees prior to the date of assumption of the contract by the governing body of a county of the 15th class shall be deemed public health department or district employees from and after the effective date of assumption of the contract for retirement purposes. Employees who

after the effective date of assumption of the contract become employed by the public health department or district shall be considered as new employees for retirement purposes.

SEC. 4. Section 20069.1 is added to the Government Code, to read:

20069.1. ''Trial court'' shall have the same meaning as the term is defined in the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8).

SEC. 5. Section 20460.1 is added to the Government Code, to read:

20460.1. (a) For all counties that contract with the board for the provision of retirement benefits for their eligible employees as of the implementation date of the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8), a trial court and a county in which the trial court is located shall jointly participate in this system by joint contract. All other counties and trial courts may elect such joint participation in accordance with the procedures set forth in this chapter. Except as provided in subdivision (b) and except as otherwise provided in this part, the trial court and the county jointly participating in this system shall each have all of the rights and all of the obligations of a contracting agency under the contract and under this part.

(b) A county shall not be responsible for the employer or employee contributions required to be paid on behalf of trial court employees. A trial court shall not be responsible for the employer or employee contributions required to be paid on behalf of county employees.

(c) As used in this chapter, ''joint contract'' means a contract with the board as set forth in subdivision (a).

SEC. 6. Section 20469.1 is added to the Government Code, to read:

20469.1. (a) Notwithstanding 20469, if after receiving the approximate contribution quotation the governing body of a county and the presiding officer of a trial court located in the same county intend to approve a proposed joint contract, both shall adopt a resolution giving notice of that intention. Each resolution shall contain a summary of the major provisions of the proposed retirement plan. The contract shall not be approved unless an election has been held to permit the employees proposed to be included in this system to express by secret ballot their approval or disapproval of the retirement proposal. Prior to the election the county governing body and the trial court presiding officer shall be furnished with a schedule of rates of contribution of members, which shall be made available by the governing body and the presiding officer to each employee proposed to be included in this system. The ballot at the election shall include the summary of the retirement plan as set forth in the resolution. The election shall be conducted in the manner prescribed by the governing body and the presiding officer which shall be such as to permit the firefighters, the police officers, the county peace

officers, and the other employees proposed to be included in this system to express separately their approval or disapproval.

(b) For all counties that participate in this system by contract with the board as of the implementation date of the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8), the trial court located in the county shall be deemed to elect to participate in this system jointly with the county pursuant to the terms and conditions of the county's contract with the board. The county's contract shall be amended to add the trial court as a contracting party. The amended contract shall be deemed adopted by the county. This amendment shall establish a joint contract.

SEC. 7. Section 20471.1 is added to the Government Code, to read:

20471.1. Notwithstanding Section 20471, and except as provided in subdivision (b) of Section 20469.1, approval of a proposed joint contract by a trial court and county shall be by ordinances or resolutions adopted by both the affirmative vote of a majority of the members of the governing body of a county and the presiding officer of the trial court, not less than 20 days after the latest adoption of the notices of intention. The resolution of the presiding officer of the trial court and the resolution or ordinance of the governing body of the county which approve the joint contract must be adopted within 30 days of each other.

SEC. 8. Section 20474 of the Government Code is amended to read:

20474. Whenever by any provision of law an election is given to contracting agencies to subject themselves and their employees to provisions of this part otherwise not applicable to contracting agencies and their employees, and no other means of making the election is expressly provided, any contracting agency may make the election by amendment to its contract with the board approved in the manner provided for the approval of the contracts including an election among the employees affected unless the amendment only adds benefits without affecting members' contributions, in which case the election among the employees is not required. An amendment to a joint contract that has been approved by the governing body of the county shall be deemed approved by the presiding officer of the trial court located within the county. The amendment shall specify the date upon which the agency and its employees shall become subject to the provisions. That date shall not be earlier than the first day following the approval of the contract pursuant to Section 20471, except that if the rate of the employer's contributions changes, the effective date shall not be earlier than the first day of the pay period following the approval. Any election made by amendment to the contract shall be irrevocable until the contract is terminated. However, benefits provided by the amendment may be increased or improved from time to time by further amendment to the contract. From and after the date specified in the amendment to the

contract the provisions, as they are in effect at the time of election and as they may be amended in the future, shall apply to the contracting agency and to its employees, and the rights, privileges, duties, liabilities, and responsibilities of the contracting agency and of each of its employees included in this system shall be governed thereby.

SEC. 9. Section 20570 of the Government Code is amended to read:

20570. (a) If the contract has been in effect for at least five years and was approved by an ordinance or resolution adopted by the governing body of the contracting agency, the governing body may terminate it by the adoption of a resolution giving notice of intention to terminate, and by the adoption, not less than one year thereafter by the affirmative vote of two-thirds of the members of the governing body, of an ordinance or resolution terminating the contract. Termination shall be effective with board approval on the date designated in the ordinance or resolution terminating the contract.

(b) If the contract is a joint contract and the joint contract has been in effect for at least five years, the contract may be terminated by the adoption of trial court and county resolutions giving notice of intention to terminate, and by the adoption, not less than one year thereafter by the affirmative vote of two-thirds of the members of the governing body of the county, and by the presiding officer of the trial court, of an ordinance or resolution terminating the contract. Termination shall be effective with board approval on the date designated in the ordinance terminating the contract.

SEC. 10. Section 20815 of the Government Code is amended to read:

20815. (a) Notwithstanding any other provision of this part, including, but not limited to, Sections 20225 and 20790, the board shall not combine the assets and liabilities of public agency employers into a single account for the purpose of setting a uniform rate of employer contributions for all public agency employers. The rate at which a public employer's contribution to this system shall be fixed shall be based upon its own experience. Provisions of law that provide authority for this system to combine the assets and liabilities of public employers into a single account for purposes of establishing a uniform rate are superseded to the extent that they provide that authority. For purposes of this section only, references to public employers shall not be construed to include school employers.

(b) Notwithstanding subdivision (a), the assets and liabilities of a county and a trial court jointly contracting with the board under Section 20460.1 shall be combined for purposes of setting the employer contribution rate for both the county and the trial court.

SEC. 11. Section 22754 of the Government Code is amended to read:

22754. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) ''Board'' means the Board of Administration of the Public Employees' Retirement System.

(b) ''Employee'' means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(c) ''Carrier'' means a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) ''Health benefits plan'' means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) ''Annuitant'' means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21547 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) ''Family member'' means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) ''Contracting agency'' means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), that provides a retirement system for its employees funded wholly or in part by public funds and a trial court as defined in the Trial Court Employment Protections and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8).

(h) ''Employer'' means the state, any contracting agency employing an employee, and any agency that has elected to become subject to this part pursuant to Section 22856.

(i) ''Special district'' means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 12. Section 68656 is added to the Government Code, to read:

68656. This chapter shall remain in effect until January 1, 2002, and is repealed as of that date, unless another statute, which is enacted and becomes operative on or before January 1, 2002, extends or deletes that date.

SEC. 13. Section 70218 of the Government Code is amended to read:

70218. When the municipal and superior court in a county are unified:

(a) Article 3 (commencing with Section 71630) of Chapter 7 of Title 8 shall be fully applicable to the county and the unified superior court.

(b) An employee organization that has been previously recognized as a representative of a group of court employees or the exclusive representative of an established appropriate bargaining unit of court employees, either by the county or municipal court or superior court shall continue to be recognized as a representative or the exclusive representative of the same employees of the county or unified superior court.

(c) An existing memorandum of understanding or agreement between the county, a municipal court, or a superior court shall remain in effect and be fully binding on the county, the unified superior court, and the employee organization involved for the term of the agreement. However, in the event of an election held under paragraph (2) of subdivision (e), (1) a memorandum of understanding or agreement with an employee organization that is no longer recognized as the exclusive representative shall continue in effect and be administered by the employee organization that receives a majority of votes in the election and is certified or recognized pursuant to paragraph (2) of subdivision (e), provided that the memorandum of understanding or agreement shall be subject to reopening on request of either the unified superior court or the newly certified or recognized employee organization, provided that no changes in that memorandum of understanding or agreement may be made during its term without mutual agreement of the unified superior court and the newly certified or recognized employee organization, and (2) a memorandum of understanding or agreement with an employee organization that receives a majority of votes in the election shall remain in full force and effect until its expiration or until replaced by a subsequent memorandum of understanding or agreement.

(d) Nothing in this article shall disturb or affect any court- or county-established appropriate bargaining unit or memorandum of

understanding or agreement between an employee organization and a county or court, unless subdivision (e) applies.

(e) (1) Where there is more than one employee organization that has been previously recognized as the exclusive representative of employees of the municipal court and the superior court, the county and the unified superior court shall continue to recognize each exclusive representative of each bargaining unit and shall continue to be bound by any existing memorandum of understanding or agreement covering those employees for a period not to exceed 225 days from date of unification, pending the exhaustion of the election procedure set forth in paragraph (2). Any conflicts in the existing agreements as to wages and other terms and conditions of employment shall be subject to negotiation between the county or unified superior court and each of the exclusive representatives.

(2) If after unification it is determined that two or more exclusive representatives seek to represent employees in a single appropriate bargaining unit, the unified superior court shall conduct a representation election in accordance with Article 3 (commencing with Section 71630) of Chapter 7 of Title 8. With respect to this process (A) the unified court shall meet and confer in good faith with all incumbent exclusive representatives regarding the establishment of appropriate bargaining units, (B) the county or unified superior court shall maintain a neutral position as to the competing employee organizations in the election, (C) the employee organization shall be certified or recognized as the exclusive bargaining representative upon receiving a majority of the votes cast in the representation election, (D) the election of an exclusive representative shall be conducted no later than 180 days from the effective date of unification or the effective date of this subparagraph, whichever comes later, and (E) the certification or recognition of an exclusive representative shall be complete no later than 45 days from the date of the election.

(f) This section applies to all unified superior courts, and the counties and employee organizations involved, beginning on the date of unification.

SEC. 14. Chapter 7 (commencing with Section 71600) is added to Title 8 of the Government Code, to read:

CHAPTER 7. TRIAL COURT EMPLOYMENT PROTECTION AND GOVERNANCE ACT

Article 1. General Provisions

71600. This chapter may be cited as the Trial Court Employment Protection and Governance Act.

71601. For purposes of this chapter, the following definitions shall apply:

(a) ''Appointment'' means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court's personnel policies, procedures, and plans.

(b) ''Employee organization'' means any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with the trial court.

(c) ''Hiring'' means appointment as defined in subdivision (a).

(d) ''Mediation'' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) ''Meet and confer in good faith'' means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter, local rule, regulation, or ordinance, or when the procedures are utilized by mutual consent.

(f) ''Personnel rules,'' ''personnel policies, procedures, and plans,'' and ''rules and regulations'' mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) ''Promotion'' means promotion within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) ''Recognized employee organization'' means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630) of this chapter.

(i) ''Subordinate judicial officer'' means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, juvenile referee, and pro tem judge.

(j) ''Transfer'' means transfer within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) ''Trial court'' means a superior court or a municipal court.

(*l*) ''Trial court employee'' means a person who is both of the following:

(1) Paid from the trial court's budget, regardless of the funding source. For the purpose of this paragraph, ''trial court's budget'' means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court's right to control the manner and means of his or her work because of the trial court's authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the ''trial court'' includes the judges of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a ''trial court employee'' if and only if both paragraphs (1) and (2) of subdivision (*l*) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 810 of the California Rules of Court. The phrase ''trial court employee'' includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (*l*). The phrase ''trial court employee'' does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed.

71612. Except as otherwise expressly provided in this chapter, the enactment of this act shall not be a cause for the modification or elimination of any existing wages, hours, or terms and conditions of employment of trial court employees. However, except as to those procedures, rights, or practices described in this chapter as minimum standards, the enactment of this act shall not prevent the modification or elimination of existing wages, hours or terms and conditions of employment through the meet and confer in good faith process or, in those situations in which the employees are either exempted from representation, or are not represented by a recognized employee organization, through appropriate procedures.

71614. Nothing in this chapter shall be construed as affecting the interpretation or operation of Sections 70210 to 70219, inclusive, for purposes of unification of the trial courts.

71615. (a) Except as provided in subdivision (b), the effective date of this act shall be its implementation date.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this act later than the effective date of this act. However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to such provisions the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement, unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

(c) As of the implementation date of this chapter, all of the following shall apply:

(1) All persons who meet the definition of trial court employee shall become trial court employees at their existing or equivalent classifications.

(2) Employment seniority of a trial court employee, as calculated and used under the system in effect prior to the implementation of this act, shall be calculated and used in the same manner by the trial court.

(3) A trial court employee shall have the same status he or she had as a probationary, permanent, or regular employee under the system in effect prior to implementation of this act. A probationary employee shall not be required to serve a new probationary period and shall continue the existing probationary period under the terms of hire.

(4) Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding transfer between the trial court and the county that are in place as of the implementation date of this act shall be continued while an existing memorandum of understanding or agreement remains in effect or for two years, whichever is longer, and any further rights of trial court employees to transfer between the trial court and the county shall be subject to the obligation to meet and confer in good faith at the local level between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county. Subject to the agreement of the county, and unless prohibited or limited by charter provisions, the policies regarding the portability of seniority, accrued leave credits, and leave accrual rates that are in effect upon the implementation date of this act shall be continued if trial court or county employees transfer between the trial court and the county or the county and the trial court while an existing memorandum of understanding or agreement remains in effect, or for a period of two

years, whichever is longer. Any further right of trial court employees to portability is subject to the obligation to meet and confer in good faith between representatives of the trial court and representatives of recognized employee organizations and local negotiation between the trial court and the county.

(5) Each trial court shall be deemed the successor employer of all trial court employees in the county in which the trial court is located.

(d) In establishing local personnel structures for trial court employees in accordance with this chapter, the trial court shall comply with contractual obligations, and consideration shall be given to minimizing disruption of the trial court workforce and protecting the rights accrued by trial court employees under their current systems. However, prior contractual obligations and rights may be reconsidered subject to the obligation to meet and confer in good faith, provided both parties give consideration to past contractual obligations and rights.

(e) Unrepresented trial court employees are governed by a trial court's personnel policies, procedures, and plans. The implementation of this act shall not be a cause for changing a trial court's personnel policies, procedures, and plans applicable to unrepresented trial court employees except where required to bring such policies, procedures, and plans into conformity with this chapter. Except as otherwise expressly provided in this act, a trial court retains all existing rights with respect to revising its personnel policies, procedures, and plans as applied to unrepresented trial court employees.

(f) Upon implementation of this act in a trial court, Sections 68650 to 68655, inclusive, and Rules 2201 to 2210, inclusive, of the California Rules of Court, shall be inoperative as to that trial court.

71616. If any provision of this chapter, or the application thereof, to any person or circumstances, is held invalid, the invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provisions or application and, to this end the provisions of this chapter are severable.

71617. To the extent this chapter applies to a municipal court, any action by the municipal court specifying the number, qualification, or compensation of officers or employees of the municipal court which differs from that prescribed by the Legislature pursuant to Section 5 of Article VI of the California Constitution shall remain in effect for a period of no more than two years unless prescribed by the Legislature within that period.

71618. The Legislature hereby finds and declares that the status, rights, and protections provided to court employees under this chapter constitute a matter of statewide concern. Therefore, this chapter is applicable to all counties, notwithstanding charter provisions to the contrary. In order to ensure that effective court services are provided to

all people of this state and to ensure stable court employer-employee relations, it is necessary that this chapter be applicable to all trial courts and court employees, as defined in this chapter, wherever situated within the State of California.

Article 2. Authority to Hire, Classification, and Compensation

71620. (a) Each trial court may establish such job classifications and may appoint such trial court officers, assistants, and employees as are deemed necessary for the performance of the duties and the exercise of the powers conferred by law upon the trial court and its members.

(b) Each trial court may appoint an executive or administrative officer who shall hold office at the pleasure of the trial court and shall exercise such administrative powers and perform such other duties as may be required by the trial court. The executive or administrative officer has the authority of a clerk of the trial court. The trial court shall fix the qualifications of the executive or administrative officer and may delegate to him or her any administrative powers and duties required to be exercised by the trial court. Notwithstanding any other provision of law, the trial court may, by local rule, specify which of the powers, duties, and responsibilities required or permitted to be exercised or performed by the county clerk in connection with judicial actions, proceedings, and records shall be exercised or performed by the executive or administrative officer. The county clerk shall be relieved of any obligation imposed on him or her by law with respect to these specified powers, duties, and responsibilities, to the extent the local rule imposes on the executive or administrative officer the same powers, duties, and responsibilities.

71622. (a) Each trial court may establish and may appoint such subordinate judicial officers as are deemed necessary for the performance of subordinate judicial duties as are authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment of a subordinate judicial officer shall be made by order entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned

satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

71623. (a) Each trial court may establish a salary range for each of its employee classifications. Considerations shall include, but are not limited to, local market conditions and other local compensation-related issues such as difficulty of recruitment or retention.

(b) All persons who are trial court employees as defined in Section 71601, as of the implementation date of this chapter shall become trial court employees at their existing salary rate. For employees who are represented by a recognized employee organization, salary ranges may be subject to modification pursuant to the terms of a memorandum of understanding or agreement, or upon expiration of an existing memorandum of understanding or agreement subject to meet and confer in good faith. For employees who are not represented by a recognized employee organization, salary ranges may be revised by the trial court. However, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of salary ranges by a trial court.

71623.5. (a) As of July 1, 2001, trial courts shall provide workers' compensation coverage for trial court employees under a workers' compensation program established by the Administrative Office of the Courts or a program selected or approved by the Administrative Office of the Courts. The Judicial Council shall adopt rules of court requiring the Administrative Office of the Courts to establish a workers' compensation program for the trial courts and to provide guidance to the trial courts to ensure that the courts' workers' compensation coverage, including workers' compensation employer liability coverage, meets all legal requirements and is cost-efficient.

(b) If, as of the implementation date of this chapter, the county provides workers' compensation coverage for trial court employees, the county shall continue to provide such coverage, under the same terms and conditions as coverage was provided immediately preceding implementation of this chapter. This coverage shall continue for a transition period of up to 24 months after the implementation date of this chapter, unless the court gives the county 60 days notice that the court no longer needs the county to provide such coverage. Subject to approval

by the Administrative Office of the Courts, the parties may mutually agree to county-provided coverage beyond the 24-month transition period.

(c) County provision of workers' compensation coverage for trial court employees shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

71624. (a) A county that contracts with the Board of Administration of the Public Employees' Retirement System as of the implementation date of this chapter and the trial court located within that county shall establish a joint contract with the county under Section 20460.1 and subdivision (b) of Section 20469.1 in accordance with the pertinent provisions of the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2) and any other applicable rules of the retirement system. Eligibility to participate in the Public Employees' Retirement System shall be determined in accordance with the pertinent provisions of the Public Employees' Retirement Law and any other applicable rules of the retirement system. For all other counties and their corresponding county defined-benefit retirement system, a trial court employee shall be eligible to participate as a member in the existing county defined-benefit retirement system in the county in which the court is located.

(b) If a trial court employee participates as a member in a county defined-benefit retirement system, his or her participation shall be subject to the applicable statutes, rules, regulations, policies, and plan and contract terms of the retirement system as is any other member of the system. In accordance with these provisions, the trial court employee who is a member of a county defined-benefit retirement system shall have the right to receive the same defined-benefit retirement plan benefits as county employees without the opportunity to meet and confer with the county as to those benefits. For all county defined-benefit systems other than the Public Employees' Retirement System, the trial court shall pay to the county retirement system at the same rate of contribution for trial court employees as is required of the county for county employees under the county retirement system for the same benefit level. Provided that a county and a trial court are parties to a joint contract with CalPERS for the provision of retirement benefits under Sections 20460.1 and 20469.1, the county defined-benefit retirement system contribution rates for the trial court shall be the same as the contribution rates for the county for the same benefit levels.

(c) Unless otherwise required by law, as provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the trial court employee's contractual coverage under, or exclusion from, social security.

(d) To facilitate trial court employee participation in county defined-benefit retirement plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(e) Nothing in this section precludes a trial court from offering a different defined-benefit retirement plan for trial court employees that is separate from the county defined-benefit retirement plan, subject to the terms of a memorandum of understanding or agreement for represented employees, or the terms of trial court policies, procedures, or plans, for unrepresented employees. The mechanism for implementation of these plans shall be created by statute.

(f) For purposes of this section, ''county defined-benefit retirement system'' means a defined-benefit retirement system administered by the county or applicable governing body, including systems established pursuant to the Public Employees Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2), the County Employees' Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 3 of Title 3), or an independent retirement system or plan.

(g) On the date this chapter is implemented, a trial court employee who is a member of any county defined-benefit retirement system shall continue to be eligible to receive the same level of benefits that the member was eligible to receive prior to implementation of this chapter.

71625. (a) Trial court policies related to accrued leave benefits, including the type and accrual rate of accrued leave benefits, in effect on the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (c).

(b) The implementation of this chapter shall not cause a termination of employment and rehire for purposes of accrued leave benefits and shall not result in either the trial court or the county cashing out trial court employees' accrued leave balances. A trial court employee shall retain his or her accrued leave balances upon implementation of this chapter. A trial court employee shall not cash out his or her accrued leave balances solely as a result of implementation of this chapter.

(c) For employees who are represented by a recognized employee organization, the type and accrual rate of, and policies relating to, accrued leave benefits are subject to modification pursuant to the terms of a memorandum of understanding or agreement, or upon expiration of an existing memorandum of understanding or agreement, or upon revision to personnel, policies, procedures and plans, subject to meet and confer in good faith. For employees who are not represented by a recognized employee organization, the type and accrual rate of, and policies relating to, accrued leave benefits may be revised by the trial court. However, as provided in Section 71612, the implementation of

this chapter shall not be a cause for the modification of the type and accrual rate of, and policies relating to, accrued leave benefits.

71626. Notwithstanding any other provision of law, with respect to benefits which those persons who are trial court employees on and after the implementation date of this chapter would receive upon retirement, the following provisions shall apply:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee. The level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b) or (c). If the same retiree group insurance benefits are not otherwise permitted by law or the vendor, the same level of retiree group insurance benefits shall be provided subject to subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee pursuant to the terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those retiree group insurance benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee pursuant only to personnel, policies, procedures, and plans, may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of retiree group insurance benefits may be revised by the trial court.

(c) A county shall have the authority to provide retiree group insurance benefits to retired trial court employees. If the county administers retiree group insurance benefits to trial court employees or retired trial court employees, or if the trial court contracts with the county to administer retiree group insurance benefits to trial court employees or retired trial court employees, a trial court employee or retired trial court employee shall be eligible to participate in county retiree group insurance benefits and plans subject to county retiree group insurance benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee or retired trial court employee shall have the right to accrual of retiree group insurance benefits, or to receive the

same level of retiree group insurance benefits as county employees in similar classifications as designated by the trial court subject to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of retiree group insurance benefits accruing to a trial court employee or provided to a retired trial court employee is subject to modification by the county, if the county changes the level of retiree group insurance benefits of county employees in classifications that have been designated as similar classifications pursuant to paragraph (1).

(d) For purposes of this section:

(1) ''Retiree group insurance benefits'' means group insurance benefits which trial court employees would receive upon retirement.

(2) ''County,'' means the board of supervisors of the county where the trial court is located, or the applicable governing body for the retirement system of such county.

(e) The trial court shall reimburse the county for the cost of coverage of retired trial court employees in county retiree group insurance benefit plans. The county may charge the trial court for retiree group insurance benefits only the amount that the county is required to pay in excess of the retirement system funding or prefunding of the retiree group insurance benefits. The county and the trial court may agree to an alternative arrangement to fund retiree group insurance benefits.

71626.5. (a) As of the implementation date of this chapter:

(1) If a trial court employee receives county retiree group insurance benefits pursuant to Section 71625 and that county funds retiree group insurance benefits from excess funds in the county's retirement system, or prefunds retiree group insurance benefits, the county or county retirement board shall administer retiree group insurance benefits to trial court employees who retire from the county retirement system. However, the county and the trial court may agree to an alternative arrangement to administer retiree group insurance benefits.

(2) In all other counties in which the trial court exercises its authority to provide retiree group insurance benefits to its employees, (A) if the trial court administers retiree group insurance benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding or agreement; and (B) if the county administers retiree group insurance benefits to trial court employees or if the trial court contracts with the county to administer retiree group insurance benefits to trial court employees, the county may continue to administer retiree group insurance benefits to trial court employees pursuant to subdivision (c) of Section 71626 or the trial court may administer retiree group

insurance benefits to trial court employees pursuant to the following transition process:

(i) While an existing memoranda of understanding or agreement remains in effect or for a transition period of up to 24 months, whichever is longer, the county shall administer retiree group insurance benefits for represented trial court employees who retire during that period, as provided in the applicable memoranda of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (iv) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(ii) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer retiree group insurance benefits for unrepresented trial court employees who retire during that period, unless notified by the trial court pursuant to subparagraph (iv) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the 24-month transition period, if the county decides to change how it administers unrepresented trial court employees' retiree group insurance benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in the administration of the benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to administer or provide benefits on its own.

(iii) If, during the 24-month transition period, the trial court decides to offer particular retiree group insurance benefits different from what the county is administering, the trial court shall be responsible for administering those particular retiree group insurance benefits.

(iv) If the trial court intends to give notice to the county that it no longer needs the county to administer specified retiree group insurance benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(b) A county's agreement to administer retiree group insurance benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(c) Nothing in this section precludes a trial court from offering a different retiree group insurance benefits plans for trial court employees that is separate from the county retiree group insurance benefits plans, subject to the terms of a memorandum of understanding or agreement for represented employees, or the terms of trial court policies, procedures, or plans, for unrepresented employees.

71627. Notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall be a cause for the modification of the level of federally regulated benefits provided to a trial court employee. The level of federally regulated benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b). If the same federally regulated benefits are not permitted by law or by the vendor, the same level of federally regulated benefits shall be provided by the trial court subject to the provisions of subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of federally regulated benefits accruing to a trial court employee pursuant to the terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those federally regulated benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of federally regulated benefits accruing to a trial court employee pursuant only to personnel, policies, procedures, and plans may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of federally regulated benefits may be revised by the trial court.

(c) If the county administers federally regulated benefits to trial court employees, or if the trial court contracts with the county to administer federally regulated benefits to trial court employees, a trial court employee shall be eligible to participate in federally regulated benefits subject to federally regulated benefit regulations, policies, terms, and conditions, and subject to both of the following requirements:

(1) A trial court employee shall have the right to receive the same level of federally regulated benefits as county employees in similar classifications, as designated by the trial court subject to meet and confer in good faith with the trial court, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of federally regulated benefits accruing to a trial court is subject to modification by the county if the county changes the level of federally regulated benefits of county employees in classifications that have been designated as similar classification pursuant to paragraph (1).

(d) For purposes of this section, ''federally regulated benefits'' means benefits that provide tax-favored treatment for employees pursuant to federal laws or regulations, including, but not limited to, cafeteria plans under Section 125 of the Internal Revenue Code, educational assistance

benefits under Section 127 of the Internal Revenue Code, and fringe benefits under Section 132 of the Internal Revenue Code, but not including federally-regulated deferred compensation plan benefits provided to trial court employees pursuant to Section 71628.

(e) As of the implementation date of this chapter:

(1) If the trial court administers federally regulated benefits for trial court employees separately from the county, the trial court shall administer these benefits as provided under existing personnel policies, procedures, plans, or memoranda of understanding or agreement applicable to trial court employees.

(2) If the county administers federally regulated benefits for trial court employees, or if the trial court contracts with the county to administer federally regulated benefits, the following provisions govern the transition of responsibility for administering these benefits to the trial court:

(A) Until the effective date of the transition of responsibility, the county shall continue to administer represented trial court employees' federally regulated benefits as provided in the memorandum of understanding or agreement and unrepresented trial court employees' federally regulated benefits as provided in personnel policies, procedures, and plans.

(B) During the period of time between the implementation date of this chapter and the effective date of the transition of responsibility, both the trial court and the county shall cosponsor the federally regulated benefit plan. Cosponsorship shall continue as long as trial court employees are governed by a plan not offered by the trial court, but in no event longer than 18 months after the implementation date of this chapter, or the term of the memorandum of understanding or agreement applicable to trial court employees, whichever is longer, unless the trial court and the county agree to continued cosponsorship.

(C) If during the cosponsorship period the trial court decides to offer particular benefits that are different from what the county is administering, then the trial court shall be responsible for administering those particular benefits unless the trial court and county agree otherwise.

(D) The effective date of the transition of responsibility shall coincide with the first day of the applicable federally regulated benefits plan year to ensure that there is no financial impact on the employee or on either employer.

(f) To facilitate trial court employee participation in county federally regulated benefits plans, the trial court and county may mutually agree that the county will administer the payroll for trial court employees.

(g) The trial court shall reimburse the county for the cost of any coverage of trial court employees in county federally regulated benefit plans.

(h) A county shall have authority to cosponsor federally regulated benefits with a trial court to provide such benefits to trial court employees if such benefits are requested by the trial court subject to county agreement to cosponsor those benefits. A county's agreement to cosponsor those benefits shall not be construed as creating a meet and confer obligation between the county and any recognized trial court employee organization.

(i) Nothing in this section shall prevent a trial court from offering to trial court employees a future option of participating in other federally regulated benefit plans that may be developed subject to the obligation to meet and confer in good faith.

71628. Notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of deferred compensation plan benefits provided to a trial court.

If the same deferred compensation plan benefits are not permitted by law or the plan vendor, the trial court shall provide other defined compensation plan benefits at the same level, subject to the provisions of subdivision (b). The level of deferred compensation plan benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) (1) For employees who are represented by a recognized employee organization, (A) the level of deferred compensation plan benefits accruing to a trial court employee pursuant to the terms of a memorandum of understanding or agreement is subject to modification only pursuant to the terms of that memorandum of understanding or agreement, and upon expiration of that memorandum of understanding or agreement, those deferred compensation plan benefits may not be modified except pursuant to a subsequent memorandum of understanding or agreement; and (B) the level of deferred compensation plan benefits accruing to a trial court employee pursuant only to personnel, policies, procedures, and plans may be modified by the trial court, subject to meet and confer in good faith.

(2) For employees who are not represented by a recognized employee organization, the level of deferred compensation plan benefits may be modified by the trial court.

(c) If the county administers deferred compensation plan benefits to trial court employees, or if the trial court contracts with the county to administer deferred compensation plan benefits to trial court employees, a trial court employee shall be eligible to participate in deferred

compensation plan benefits subject to deferred compensation plan benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee shall have the right to receive the same level of deferred compensation plan benefits as county employees in similar classifications, as designated by the trial court subject to meet and confer in good faith with the trial court, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of deferred compensation plan benefits accruing to a trial court employee is subject to modification by the county if the county changes the level of deferred compensation plan benefits of county employees in classifications that have been designated as similar classification pursuant to paragraph (1).

(d) If the implementation of this chapter causes a change in deferred compensation plans and requires the transfer of trial court employees' plan balance to the trial court's deferred compensation plans, trial court employees shall not suffer a financial loss due to transfer-related penalties, such as deferred sales charges, and any financial loss due to transfer-related penalties shall be borne by the trial court.

(e) Trial court employees shall continue to be eligible to receive deferred compensation plan benefits from the county or the trial court. For purposes of federal 401(k) or 457 deferred compensation plans, one of the following shall apply:

(1) If permitted by federal law and deferred compensation plan vendors, trial court employees shall continue to receive federal 401(k) or 457 deferred compensation plan benefits through county plans unless the trial court modifies its plan benefits pursuant to personnel rules, subject to meet and confer in good faith.

(2) If not permitted by federal law or deferred compensation plan vendors, the trial court shall provide deferred compensation plan benefits at the same level subject to meet and confer in good faith, in which case upon transition to the new deferred compensation plan, (A) to provide the trial court time to investigate plan options, negotiate plan contracts, and establish plans, there shall be a transition period of at least six months, during which trial court employees shall continue to receive deferred compensation plan benefits from the county; and (B) a county may require that trial court employees leave their plan balances in the county's deferred compensation plan or may transfer trial court employees' plan balances to the trial court's deferred compensation plan.

(f) To facilitate trial court employee participation in county deferred compensation plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(g) The trial court shall reimburse the county for the cost of any coverage of trial court employees in county deferred compensation plans.

(h) A county is authorized to amend federal 401(k) and 457 deferred compensation plan documents as necessary to achieve the objectives of this section.

(i) Nothing in this section precludes the possibility that a trial court employee may have a future option of participating in other deferred compensation plans that may be developed subject to the obligation to meet and confer in good faith.

71629. Except as provided in Sections 71624, 71625, 71626, 71626.5, 71627, and 71628, and notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of trial court employment benefits. If the same trial court employment benefits are not permitted by law or the plan vendor, the trial court shall provide other trial court employment benefits at the same level subject to the provisions of subdivision (b). The level of trial court employment benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) For employees who are represented by a recognized employee organization, the level of trial court employment benefits provided to a trial court employee may not be modified until after the expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the trial court and recognized employee organization mutually agree to a modification. For employees who are not represented by a recognized employee organization, the level of trial court employment benefits may be revised by the trial court.

(c) The trial court shall reimburse the county for the cost of coverage of trial court employees in trial court employment benefit plans.

(d) As of the implementation date of this chapter:

(1) If the trial court administers trial court employment benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding or agreements.

(2) If the county administers trial court employment benefits to trial court employees or if the trial court contracts with the county to administer trial court employment benefits to trial court employees, the county may continue to administer trial court employment benefits to trial court employees pursuant to subdivision (e) or the trial court may

administer trial court employment benefits to trial court employees pursuant to the following transition process:

(A) While an existing memorandum of understanding or agreement remains in effect or for a transition period of 24 months, whichever is longer, the county shall administer trial court employment benefits for represented trial court employees as provided in the applicable memorandum of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(B) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer trial court employment benefits for unrepresented trial court employees, unless notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the transition period, if the county intends to change unrepresented trial court employees' trial court employment benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

(C) If, during the transition period, the trial court decides to offer particular trial court employment benefits that are different from what the county is administering, the trial court shall be responsible for administering those particular benefits.

(D) If the trial court decides that it no longer needs the county to administer specified trial court employment benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(e) To facilitate trial court employee participation in county trial court employment benefit plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(f) A county shall have authority to provide trial court employment benefits to trial court employees if those benefits are requested by the trial court and subject to county concurrence to providing those benefits. A county's agreement to provide those benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(g) Nothing in this section shall prevent the trial court from arranging for trial court employees other trial court employment benefits plans subject to the obligation to meet and confer in good faith.

Article 3. Labor Relations

71630. It is the purpose of this article to promote full communication between trial courts and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between trial courts and recognized employee organizations. It is also the purpose of this article to promote the improvement of personnel management and employer-employee relations within the trial courts in the State of California by providing a uniform basis for recognizing the right of trial court employees to join organizations of their own choice and be represented by those organizations in their employment relations with trial courts. It is also the purpose of this article to extend to trial court employees the right, and to require trial courts, to meet and confer in good faith over matters within the scope of representation, consistent with the procedures set forth in this article. This article is not intended to require changes in existing representation units, memoranda of agreement or understanding, or court rules, except as provided in this article.

71631. Except as otherwise provided by the Legislature, trial court employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Trial court employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the trial court.

71632. (a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization which has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, ''agency shop'' means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. Such an employee may be

required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three such funds designated in a memorandum of understanding or agreement between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate such funds, then to any such fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at anytime during the term of such memorandum of understanding or agreement, but in no event shall there be more than one vote taken during that term. However, the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(c) An agency shop agreement shall not apply to management, confidential, or supervisory employees.

(d) Every recognized employee organization which has agreed to an agency shop provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(e) If the trial court is party to any memorandum of understanding or agreement with any bargaining unit that includes court employees that provides for an agency shop provision as of the implementation date of this chapter, the trial court and employee organization representing the

trial court employees shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement. A new agency shop election shall not be caused upon implementation of this chapter.

(f) This section shall remain in effect until such time as Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement, and as of that date this section is repealed.

71632.5. (a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a trial court and a recognized employee organization which has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, and enactments, in accordance with this article. As used in this article, ''agency shop'' means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting recognized employee organizations shall not be required to join or financially support any recognized employee organization as a condition of employment. Such an employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three such funds, designated in a memorandum of understanding or agreement between the trial court and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate such funds, then to any such fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement, provided that (1) a request for such a vote is supported by

a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at anytime during the term of such memorandum of understanding or agreement, but in no event shall there be more than one vote taken during that term.

(c) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the trial court and a recognized employee organization or recognized employee organizations shall be placed in effect upon (1) a signed petition of at least 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in favor of the agency shop agreement. This subdivision shall only be applicable in the event the court and representatives of the recognized employee organizations, through the meet and confer process, establish a provision in a negotiated memorandum of understanding or agreement that the employee organization shall hold harmless the court and defend and indemnify the court regarding the application of any agency shop requirements or provisions, including, but not limited to, improper deduction of fees, maintenance of records, and improper reporting. This subdivision shall be applicable only on the latest of the following and thereafter:

(1) The operative date of this section.

(2) The effective date of provisions described in subdivision (g).

(3) In the event that a memorandum of understanding or agreement between the court and a recognized employee organization is in effect on the later of either of the dates referenced in paragraph (1) or (2), as to the employees covered by the memorandum of understanding or agreement, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement. The court and representatives of recognized employee organizations may mutually agree to a different date on which this subdivision is applicable.

(d) Notwithstanding subdivisions (a), (b), and (c), the trial court and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(e) An agency shop agreement shall not apply to management, confidential, or supervisory employees.

(f) Every recognized employee organization which has agreed to an agency shop provision, or is a party to an agency shop arrangement, shall keep an adequate itemized record of its financial transactions and shall

make available annually, to the trial court with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Disclosure Act of 1959 covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

(g) This section shall only become operative only if Section 3502.5 is amended to provide that a 30-percent or greater showing of interest by means of a petition requires an election regarding an agency shop, and a vote at that election of 50 percent plus one of those voting secures an agency shop arrangement.

71632.6. If the trial court is party to any memorandum of understanding or agreement with any bargaining unit that includes court employees that provides for an agency shop provision as of the implementation date of this chapter, the trial court and employee organization representing the trial court employees shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement. The implementation of this chapter shall not be a cause for a new agency shop election.

71633. Recognized employee organizations shall have the right to represent their members in their employment relations with trial courts as to matters covered by this article. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this article shall prohibit any employee from appearing on his or her own behalf regarding employment relations with the trial court.

71634. (a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) In view of the unique and special responsibilities of the trial courts in the administration of justice, decisions regarding the following matters shall not be included within the scope of representation:

(1) The merits and administration of the trial court system.

(2) Coordination, consolidation, and merger of trial courts and support staff.

(3) Automation, including, but not limited to, fax filing, electronic recording, and implementation of information systems.

(4) Design, construction, and location of court facilities.

(5) Delivery of court services.

(6) Hours of operation of the trial courts and trial court system.

(c) The impact from matters in subdivision (b) shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of trial court employees. The court shall be required to meet and confer in good faith with respect to that impact.

(d) The trial court shall continue to have the right to determine assignments and transfers of trial court employees; provided that the process, procedures, and criteria for assignments and transfers shall be included within the scope of representation.

71634.1. (a) Except in cases of emergency as provided in this section, the trial court shall give reasonable written notice to each recognized employee organization affected by any rule, practice, or policy directly relating to matters within the scope of representation proposed to be adopted by the trial court and shall give each such recognized employee organization the opportunity to meet with the trial court.

(b) In cases of emergency when the trial court determines that any rule, policy, or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the trial court shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of the rule, policy, or procedure.

71634.2. (a) The trial court, or those representatives as it may designate, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment within the scope of representation, as defined in Section 71634, with representatives of the recognized employee organizations, as defined in Section 71611, and shall consider fully the presentations as are made by the recognized employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

(b) In fulfilling the requirements of subdivision (a), the court and the county may consult with each other, may negotiate jointly, and each may designate the other in writing as its agent on any matters within the scope of representation.

71634.3. If agreement is reached by the representatives of the trial court and a recognized employee organization or organizations, they shall jointly prepare a written memorandum of the agreement or

understanding, which shall not be binding, and present it to the trial court or its designee for determination.

71634.4. If after a reasonable period of time, representatives of the trial court and the recognized employee organization fail to reach agreement, the trial court and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation, if any, shall be divided one-half to the trial court and one-half to the recognized employee organization or recognized employee organizations.

71635. The trial court shall allow a reasonable number of trial court employee representatives of recognized employee organizations reasonable time off, without loss of compensation or other benefits, when formally meeting and conferring with representatives of the trial court on matters within the scope of representation.

71635.1. Trial courts and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against court employees because of their exercise of their rights under Section 71631.

71636. (a) A trial court may adopt reasonable rules and regulations, after consultation in good faith with representatives of an employee organization or organizations, for the administration of employer-employee relations under this article. These rules and regulations may include provisions for:

(1) Verifying that an organization does in fact represent employees of the trial court.

(2) Verifying the official status of employee organization officers and representatives.

(3) Recognition of employee organizations.

(4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the trial court or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 71631.

(5) Additional procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.

(6) Access of employee organization officers and representatives to work locations.

(7) Use of official bulletin boards and other means of communication by employee organizations.

(8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.

(9) Such other matters as are necessary to carry out the purposes of this article.

(b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the

employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.

(c) No trial court shall unreasonably withhold recognition of employee organizations.

(d) Pursuant to the obligation to meet and confer in good faith, the trial court shall establish procedures to determine the appropriateness of any bargaining unit of court employees.

71636.1. In the absence of local procedures for resolving disputes on the appropriateness of a unit of representation, upon the request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for the mediation or for recommendation for resolving the dispute.

71637. (a) For purposes of this article, professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of those professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

(b) For the purpose of this section, ''professional employees'' means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys.

71637.1. For purposes of this article, in addition to those rules and regulations that a trial court may adopt pursuant to, and in the same manner as set forth in, Section 71637, any trial court may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the trial court and restricting those employees from representing any employee organization which represents other employees of the trial court, on matters within the scope of representation. Except as specifically provided otherwise in this article, this section does not otherwise limit the right of employees to be members of, and to hold office in, an employee organization.

71638. A trial court employee shall have the right to authorize a dues deduction from his or her salary or wages in the same manner provided to public agency employees pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

71639. (a) As of the implementation date of this chapter, an employee organization that is recognized as a representative of a group of trial court employees or the exclusive representative of an established bargaining unit of trial court employees, either by the county or the trial

court, shall continue to be recognized by the trial court as a representative or the exclusive representative of the same trial court employees. A trial court and recognized employee organization shall be bound by the terms of any memorandum of understanding or agreement covering trial court employees to which the trial court or the county is a party that is in effect on the implementation date of this chapter for the duration thereof, or until it expires and, consistent with law, is replaced by a successor memorandum of understanding or agreement, subject to the obligation to meet and confer in good faith. Upon expiration of a memorandum of understanding or agreement, the trial court shall meet and confer in good faith with recognized employee organizations.

(b) A trial court's local rules governing trial court employees and a trial court's personnel rules, policies, and practices, and any county rules in effect pursuant to Rule 2205 of the California Rules of Court as adopted on April 23, 1997, in effect at the time of the implementation date of this chapter, to the extent they are not contrary to or inconsistent with the obligations and duties provided for in this article, shall continue in effect until changed by the trial court. Prior to changing any rule, policy, or practice that affects any matter within the scope of representation as set forth in this article, the court shall meet and confer in good faith with the recognized employee organization as provided for in this chapter.

(c) Nothing contained in this article is intended to preclude trial court employees from continuing to be included in representation units which contain county employees.

71639.1. (a) Each trial court shall adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (c). The procedure may be mediation, arbitration, or a procedure before an administrative tribunal such as the procedure established pursuant to Sections 71653 and 71654 for review of the decision of the hearing officer in evidentiary due process hearings. The establishment of the procedure shall be subject to the obligation to meet and confer in good faith. However, nothing in this section shall prohibit a party from seeking provisional relief, such as a stay, in any case in which such provisional relief would otherwise be appropriate.

(b) In a trial court with 10 or more judges, if the trial court and a recognized employee organization reach an impasse regarding development of a procedure required pursuant to subdivision (a), the trial court shall adopt either nonbinding arbitration or a proceeding before the administrative tribunal, such as the procedure established pursuant to Sections 71653 and 71654, for review of the decision of the hearing officer in evidentiary due process or hearings.

(c) Notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, and

except as required pursuant to Section 5 of Article VI of the California Constitution, any agreements reached pursuant to negotiations held pursuant to this article are binding on the parties and may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(d) Notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, in the event that a trial court, a trial court employee, or an employee organization believes there has been a violation of this article, that party may petition the superior court for relief.

(e) The Judicial Council shall adopt rules of court to implement this hearing and appeal process. The rules of court shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear such matters, as specified in the rules of court, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that such matters shall be heard in the superior court and the court of appeal on an expedited basis, and to the extent permitted by law or rule of court, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall provide that appeals in these matters shall be heard in the court of appeal district where the matter was filed.

(f) A complete alternative to the procedure outlined in subdivisions (c) and (d) may be provided for by mutual agreement between a trial court and representatives of recognized employee organizations.

71639.2. The enactment of this article shall not be construed as making Section 923 of the Labor Code applicable to trial court employees.

71639.3. Trial courts and trial court employees are not covered by Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or any subsequent changes to these sections except as provided in this article. However, where the language of this article is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied in accordance with the judicial interpretations of the same language.

Article 4. Employment Selection and Advancement

71640. (a) As of the implementation date of this chapter, each trial court shall establish a trial court employment selection and advancement system which shall become the minimum selection and advancement system for all trial court employees and shall become part of the sole trial court employee personnel system. The trial court employment selection

and advancement system shall replace any county employment selection and advancement systems applying to trial court employees prior to the implementation date as provided in this article, except as otherwise specified in this article. This article establishes minimum standards, and each trial court employment selection and advancement system shall, at a minimum, conform to the requirements of this article.

(b) Until such time as a trial court establishes a trial court employment selection and advancement system as provided in this article, the minimum standards required pursuant to this article shall be the trial court employment selection and advancement system.

71641. Each trial court shall develop personnel rules regarding hiring, promotion, transfer, and classification. Trial courts shall meet and confer in good faith with representatives of the recognized employee organizations on those rules that cover matters within the scope of representation. However, nothing in this article is intended to expand the definition of matters within the scope of representation, as defined in Section 71634.

71642. Hiring and promotion within a trial court shall be done in a nondiscriminatory manner based on job-related factors. Trial court personnel rules shall meet the following minimum standards:

(a) Recruiting, selecting, transferring, and advancing employees shall be on the basis of their relative ability, knowledge, and skills. Initial appointment shall be through an open, competitive process. Preference shall be given to internal candidates.

(b) Formal job-related selection processes are required when filling positions.

(c) Each trial court shall have an equal employment opportunity policy applying to all applicants and employees in accordance with applicable state and federal law.

71643. (a) The following positions are excluded from the competitive selection and promotion processes required by Section 71642:

(1) Subordinate judicial officers.

(2) Managerial, confidential, temporary, and limited-term positions in accordance with a trial court's personnel policies, procedures, or plans, subject to meet and confer in good faith.

(b) If managerial, confidential, temporary, and limited-term positions are defined for the purposes of competitive selection and promotion processes within a trial court as of the implementation date of this chapter, then that definition shall be maintained for those purposes until changed subject to meet and confer in good faith. If managerial, confidential, temporary, and limited-term positions are not defined for the purposes of competitive selection and promotion processes within a trial court as of the implementation date of this chapter, then the

adoption of any such definition by the trial court shall be subject to meet and confer in good faith.

(c) The exclusion of managerial, confidential, temporary, and limited term positions from required competitive selection and promotion processes shall not affect the employees' right to representation.

(d) Permanent or regular employees who assume limited term appointments or assignments to other positions or classes shall retain their permanent or regular status during and upon expiration of the limited term appointment or assignment.

71644. Disputes between a trial court and its employees regarding the alleged misapplication, misinterpretation, or violation of the trial court's rules enacted pursuant to Sections 71641 and 71642 governing hiring, promotion, transfer, and classification shall be resolved by binding arbitration.

71645. (a) On and after the implementation date of this chapter, this article shall become the employment, selection, and advancement system for all trial court employees within a trial court and shall become part of the sole trial court employee system, replacing any aspects of county employment, selection, and advancement systems applying to trial court employees prior to the implementation date of this chapter.

(b) Except as provided in subdivision (c), the implementation date of this chapter for each trial court shall be the effective date of this chapter.

(c) The representatives of the trial court and representatives of recognized employee organizations may mutually agree to a different implementation date.

If the provisions in this article are governed by an existing memorandum of understanding or agreement covering trial court employees, as to such provisions, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement, unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

Article 5. Employment Protection System

71650. (a) As of the implementation date of this article, as provided in Section 71658, each trial court shall establish a trial court employment protection system which shall become the minimum employment protection system for all trial court employees and shall become part of the sole trial court employee personnel system. The trial court employment protection system shall replace any county employment protection systems applying to trial court employees prior to the

implementation date provided in Section 71658, except as otherwise specified in this article. This article establishes minimum standards, and each trial court employment protection system shall, at a minimum, conform to the requirements of this article.

(b) Nothing in this article shall preclude the establishment of enhanced employment protection systems pursuant to trial court personnel policies, procedures, or plans subject to meet and confer in good faith.

(c) Nothing in this article shall be construed to provide, either explicitly or implicitly, a civil cause of action for breach of contract either express or implied arising out of a termination of employment.

(d) Except as specified in subdivisions (a), (b), and (c), this article shall not apply to either of the following categories of trial court employees:

(1) Subordinate judicial officers.

(2) Managerial, confidential, temporary, limited term and probationary employees, unless included within the trial court employment protection system in accordance with trial court personnel policies, procedures or plans subject to meet and confer in good faith.

71651. (a) The trial court employment protection system in each trial court shall include progressive discipline, as defined by each trial court's personnel policies, procedures, or plans, subject to meet and confer in good faith. Except for layoffs for organizational necessity as provided for in Section 71652, discipline, up to and including termination of employment, shall be for cause.

(b) For purposes of this section, ''for cause'' means a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.

71652. (a) A trial court employee may be laid off based on the organizational necessity of the court. Each trial court shall develop, subject to meet and confer in good faith, personnel rules regarding procedures for layoffs for organizational necessity.

(b) For purposes of this section, a ''layoff for organizational necessity'' means a termination based on the needs or resources of the court, including, but not limited to, a reorganization or reduction in force or lack of funds.

71653. Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for conducting an evidentiary due process hearing to review disciplinary decisions that by law require an evidentiary due process hearing, which shall include, at a minimum, all of the following elements:

(a) A procedure for appointment of an impartial hearing officer who shall not be a trial court employee or judge of the employing court.

(b) The hearing shall result in an appropriate record with a written report that has findings of fact and conclusions that reference the evidence.

(c) The employee and trial court shall have the right to call witnesses and present evidence. The trial court shall be required to release trial court employees to testify at the hearing.

(d) The hearing officer shall have the authority to issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence as provided in Section 1282.6 of the Code of Civil Procedure.

(e) The employee shall have the right to representation, including legal counsel, if provided by the employee.

(f) If the hearing officer disagrees with the trial court's disciplinary decision, the trial court shall furnish a certified copy of the record of proceedings before the hearing officer to the employee or, if the employee is represented by a recognized employee organization or counsel, to that representative, without cost.

71654. Subject to meet and confer in good faith, each trial court shall establish in its personnel rules a process for the trial court to review a hearing officer's report and recommendation made pursuant to Section 71653 that provides, at a minimum, that the decision of the hearing officer shall be subject to review, as follows:

(a) A trial court shall have 30 calendar days from receipt of the hearing officer's report or receipt of the record of the hearing, whichever is later, to issue a written decision accepting, rejecting or modifying the hearing officer's report or recommendation unless the trial court and employee mutually agree to a different timeframe.

(b) In making its decision under subdivision (a), the trial court shall be bound by the factual findings of the hearing officer, except factual findings that are not supported by substantial evidence, and the trial court shall give substantial deference to the recommended disposition of the hearing officer.

(c) If the trial court rejects or modifies the hearing officer's recommendation, the trial court shall specify the reason or reasons why the recommended disposition is rejected in a written statement which shall have direct reference to the facts found and shall specify whether the material factual findings are supported by substantial evidence. The trial court may reject or modify the recommendation of the hearing officer only if the material factual findings are not supported by substantial evidence, or for any of the following reasons or reasons of substantially similar gravity or significance:

(1) The recommendation places an employee or the public at an unacceptable risk of physical harm from an objective point of view.

(2) The recommendation requires an act contrary to law.

(3) The recommendation obstructs the court from performing its constitutional or statutory function from an objective point of view.

(4) The recommendation disagrees with the trial court's penalty determination, but the hearing officer has not identified material, substantial evidence in the record that provides the basis for that disagreement.

(5) The recommendation is contrary to past practices in similar situations presented to the hearing officer that the hearing officer has failed to consider or distinguish.

(6) From an objective point of view, and applied by the trial court in a good faith manner, the recommendation exposes the trial court to present or future legal liability other than the financial liability of the actual remedy proposed by the hearing officer.

(d) If a trial court's review results in rejection or substantial modification of the hearing officer's recommendation, then the final review shall be conducted by an individual other than the disciplining officer. If the disciplining officer is a judge of the trial court, the review shall be made by another judge of the court, a judicial committee, an individual, or panel as specified in the trial court's personnel rules. However, in a trial court with two or fewer judges, if the trial court has no other judge than the disciplining judge or judges, the judge or judges may conduct the review; and, as a minimum requirement, in a trial court with 10 or more judges, the review shall be by a panel of three judges, whose decision shall be by a majority vote, which shall be selected as follows:

(1) One judge shall be selected by the presiding judge or his or her designee.

(2) One judge shall be selected by the employee or, if the employee is represented, by his or her bargaining representative.

(3) The two appointed judges shall select a third judge.

On panels in a trial court with 10 or more judges, no judge may be selected to serve without his or her consent; the term of office of the panel shall be defined by local personnel policies, procedures, or plans subject to the obligation to meet and confer in good faith; and no judge shall serve on the panel in a case in which he or she has imposed discipline.

71655. (a) An employee may challenge the decision of the disciplining trial court, made pursuant to Section 71654, rejecting or modifying the hearing officer's recommendation by filing a writ of mandamus pursuant to Section 1094.5 of the Code of Civil Procedure in the appropriate court, and such review by that court shall be based on the entire record. If required by the writ procedure and if not previously provided to the disciplined employee, the disciplining court shall furnish a certified copy of the record of the proceeding before the hearing officer to the disciplined employee or, if the employee is represented, to the

bargaining representative without charge. In reviewing the disciplining trial court's rejection or modification of the hearing officer's recommendation, the reviewing court shall be bound by the hearing officer's material factual findings that are supported by substantial evidence.

(b) The denial of due process or the imposition of a disciplinary decision that by law requires a due process hearing without holding the required hearing may be challenged by a petition for a writ of mandate.

71656. Notwithstanding any other provision of this article, in a county of the first class as defined in Section 28022 as of January 1, 2001:

(a) As of the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall remain in that system for the sole purposes of evidentiary due process hearings before the county civil service commission as an alternative to the due process hearings provided for in Sections 71653, 71654, and 71655, unless the employee elects, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article.

(b) One year after the implementation date provided in Section 71658, a trial court employee who was a member of a county civil service system shall be deemed to have elected, pursuant to subdivision (c), to be subject to the trial court employment protection system provided in this article unless the employee has, during that year, submitted to the trial court a signed writing expressly electing the county civil service commission solely for the purposes of evidentiary due process hearings in lieu of the hearings provided for in Sections 71653, 71654, and 71656. However, no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. The one-year period in which to elect the county civil service commission shall be tolled during the period of time when a trial court employee is disabled from making an election because of pending disciplinary action or proceedings.

(c) A trial court employee who is subject to the county civil service system may elect at any time to be subject to the trial court employment protection system provided in this article, except that no election may be made after receiving notice of intended discipline until after the disciplinary action has been finally resolved and the employee has exhausted all remedies related to that action. An election to be subject to the trial court employment protection system may not be revoked.

(d) A trial court employee who elects to remain in the county civil service system and who later is promoted or transferred into a position that is comparable to a position that is classified as exempt from the

county civil service system shall be subject to the trial court employment protection system for all purposes.

(e) Trial court employees in a county of the first class eligible for making an election pursuant to subdivisions (a) and (b) shall be deemed county employees for purposes of remaining eligible for evidentiary due process hearings before the county civil service commission.

(f) A trial court shall adopt procedures, subject to meet and confer in good faith, that establish a process for election pursuant to this section.

71657. (a) Disciplinary action served on an employee prior to the implementation date of this chapter shall remain in effect in accordance with the procedures established under the trial court's predecessor personnel system.

(b) Appeals of disciplinary action served on an employee prior to the implementation date of this chapter shall be made in accordance with the procedures established under the trial court's predecessor personnel system. Appeals of disciplinary action served on an employee after the implementation date of this chapter shall be made in accordance with the procedures established pursuant to this article. The consequences of past discipline under the trial court's new employment protection system pursuant to this article on past discipline shall be subject to meet and confer in good faith.

71658. (a) Except as provided in subdivision (b), the implementation date of this article is the effective date of this chapter.

(b) Representatives of a trial court and representatives of recognized employee organizations may mutually agree to an implementation date of this article different from that specified in subdivision (a). However, if any provisions of this chapter are governed by an existing memorandum of understanding or agreement covering trial court employees, as to those provisions, the implementation date shall be either the date a successor memorandum of understanding or agreement is effective or, if no agreement for a successor memorandum of understanding or agreement is reached, 90 days from the date of the expiration of the predecessor memorandum of understanding or agreement unless representatives of the trial court and representatives of recognized employee organizations mutually agree otherwise.

Article 6. Personnel Files

71660. Each trial court shall adopt personnel rules, subject to the obligation to meet and confer in good faith, to provide trial court employees with access to their official personnel files. The rules shall provide, at a minimum, that all of the following applies:

(a) Each trial court shall, at reasonable times and intervals, permit an employee, upon that employee's request, to inspect his or her official

personnel files that are used, or have been used, to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each trial court shall keep a copy of each employee's official personnel files at the place where the employee reports to work, or shall make the official personnel files available where the employee reports to work within a reasonable period of time after a request for the official personnel files by the employee.

(c) Records of a trial court employee relating to the investigation of a possible criminal offense, letters of reference, and other matters protected by constitutional, statutory, or common law provisions, shall be excluded from the personnel files for purposes of this section.

Article 7. Relation to Other Trial Court Statutes

71670. Nothing in this chapter shall be construed to affect the provisions of the Brown-Presley Trial Court Funding Act (Chapter 13 (commencing with Section 77000) of Title 8) or to impose upon the Judicial Council or the state any obligation to make an allocation to a trial court to fund expenses or obligations incurred by the trial court pursuant to this chapter.

71671. Notwithstanding any other provision of law, each trial court employee shall have the protections provided for in Article 5 (commencing with Section 71650) of this chapter, except as otherwise provided by this chapter.

71672. Notwithstanding any other provision of law, each trial court employee shall be entitled to such benefits as are provided for in Article 2 (commencing with Section 71620) of this chapter.

71673. Notwithstanding any other provision of law, the trial court may exercise the authority and power granted to it pursuant to Article 2 (commencing with Section 71620) of this chapter, including, but not limited to, the authority and power to establish job classifications, to appoint such employees as are necessary, to establish salaries for trial court employees, and to arrange for the provision of benefits for trial court employees, without securing the approval or consent of the county or the board of supervisors, and without requiring any further legislative action, except as otherwise provided by this chapter.

71674. The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter, the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions. The

commission shall report its recommendations to the Legislature, including any proposed statutory changes, on or before January 1, 2002.

SEC. 15. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1011

An act to amend Sections 639 and 1282.4 of the Code of Civil Procedure, relating to civil proceedings.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 639 of the Code of Civil Procedure is amended to read:

639. When the parties do not consent, the court may, upon the application of any party, or of its own motion, direct a reference in the following cases:

(a) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

(b) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

(c) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.

(d) When it is necessary for the information of the court in a special proceeding.

(e) When the court in any pending action determines in its discretion that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon. In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:

(1) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.

(2) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.

(f) When a referee is appointed pursuant to subdivision (e), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.

SEC. 1.5. Section 639 of the Code of Civil Procedure is amended to read:

639. (a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases:

(1) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

(2) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

(3) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.

(4) When it is necessary for the information of the court in a special proceeding.

(5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.

(b) In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:

(A) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.

(B) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.

(c) When a referee is appointed pursuant to paragraph (5) of subdivision (a), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.

(d) All appointments of referees pursuant to this section shall be by written order and shall include the following:

(1) When the referee is appointed pursuant to paragraph (1), (2), (3), or (4) of subdivision (a), a statement of the reason the referee is being appointed.

(2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.

(3) The subject matter or matters included in the reference.

(4) The name, business address, and telephone number of the referee.

(5) The maximum hourly rate the referee may charge and, at the request of any party, the maximum number of hours for which the referee may charge. Upon the written application of any party or the referee, the court may, for good cause shown, modify the maximum number of hours subject to any findings as set forth in paragraph (6).

(6) (A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee. A court shall not appoint a referee at a cost to the parties if neither of these findings is made.

(B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party, not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.

(e) In any matter in which a referee is appointed pursuant to paragraph (5) of subdivision (a), a copy of the order appointing the referee shall be forwarded to the office of the presiding judge of the court. The Judicial Council shall, by rule, collect information on the use of these references and the reference fees charged to litigants, and shall report thereon to the Legislature by January 1, 2003. This subdivision shall become inoperative on January 1, 2004.

SEC. 2. Section 1282.4 of the Code of Civil Procedure, as amended by Section 1 of Chapter 915 of the Statutes of 1998, is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes such waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, timely files the certificate described in subdivision (c) and the attorney's appearance is approved by the arbitrator, the arbitrators, or the arbitral forum.

(c) Prior to the first scheduled hearing in an arbitration, the attorney described in subdivision (b) shall serve a certificate on the arbitrator or arbitrators, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. In the event that the attorney is retained after the first hearing has commenced, then the certificate shall be served prior to the first hearing at which the attorney appears. The certificate shall state all of the following:

(1) The attorney's residence and office address.

(2) The courts before which the attorney has been admitted to practice and the dates of admission.

(3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(4) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(5) That the attorney is not a resident of the State of California.

(6) That the attorney is not regularly employed in the State of California.

(7) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

(8) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(9) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application, and whether or not it was granted.

(10) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) Failure to timely file the certificate described in subdivision (c) or, absent special circumstances, repeated appearances shall be grounds for disqualification from serving as the attorney of record in the arbitration in which the certificate was filed.

(e) An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be

subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the arbitration.

(f) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(h) Nothing in this section shall apply to Division 4 (commencing with Section 3201) of the Labor Code.

(i) (1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent of the Legislature to respond to the holding in Birbrower v. Superior Court (1998) 17 Cal.4th 117, as modified at 17 Cal.4th 643a (hereafter Birbrower), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (g), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the Legislature's intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in Birbrower to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that Birbrower is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (h), it is the intent of the Legislature to make clear that nothing in this section shall affect those provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code.

(j) This section shall be operative until January 1, 2006, and on that date shall be repealed.

SEC. 3. Section 1282.4 of the Code of Civil Procedure, as added by Section 2 of Chapter 915 of the Statutes of 1998, is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes the waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) This section shall become operative on January 1, 2006.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 639 of the Code of Civil Procedure proposed by both this bill and AB 2912. 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 639 of the Code of Civil Procedure, and (3) this bill is enacted after AB 2912, in which case Section 1 of this bill shall not become operative.

CHAPTER 1012

An act to amend Sections 1785.11 and 1785.13 of the Civil Code, relating to consumer credit.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 1785.11 of the Civil Code is amended to read:

1785.11. (a) A consumer credit reporting agency shall furnish a consumer credit report only under the following circumstances:

(1) In response to the order of a court having jurisdiction to issue an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person whom it has reason to believe:

(A) Intends to use the information in connection with a credit transaction, or entering or enforcing an order of a court of competent jurisdiction for support, involving the consumer as to whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer, or for insurance claims settlements; or

(D) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status; or

(E) Intends to use the information in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940; or

(F) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(b) A consumer credit reporting agency may furnish information for purposes of a credit transaction specified in subparagraph (A) of paragraph (3) of subdivision (a), where it is a credit transaction that is not initiated by the consumer, only under the circumstances specified in paragraph (1) or (2), as follows:

(1) The consumer authorizes the consumer credit reporting agency to furnish the consumer credit report to the person.

(2) The proposed transaction involves a firm offer of credit to the consumer, the consumer credit reporting agency has complied with subdivision (d), and the consumer has not elected pursuant to paragraph (1) of subdivision (d) to have the consumer's name excluded from lists of names provided by the consumer credit reporting agency for purposes of reporting in connection with the potential issuance of firm offers of credit. A consumer credit reporting agency may provide only the following information pursuant to this paragraph:

(A) The name and address of the consumer.

(B) Information pertaining to a consumer that is not identified or identifiable with a particular consumer.

(c) Except as provided in paragraph (2) of subdivision (a) of Section 1785.15, a consumer credit reporting agency shall not furnish to any person a record of inquiries solely resulting from credit transactions that are not initiated by the consumer.

(d) (1) A consumer may elect to have his or her name and address excluded from any list provided by a consumer credit reporting agency pursuant to paragraph (2) of subdivision (b) by notifying the consumer credit reporting agency, by telephone or in writing, through the notification system maintained by the consumer credit reporting agency pursuant to subdivision (e), that the consumer does not consent to any use of consumer credit reports relating to the consumer in connection with any transaction that is not initiated by the consumer.

(2) An election of a consumer under paragraph (1) shall be effective with respect to a consumer credit reporting agency, and any affiliate of the consumer credit reporting agency, on the date on which the consumer notifies the consumer credit reporting agency.

(3) An election of a consumer under paragraph (1) shall terminate and be of no force or effect following notice from the consumer to the

consumer credit reporting agency, through the system established pursuant to subdivision (e), that the election is no longer effective.

(e) Each consumer credit reporting agency that furnishes a prequalifying report pursuant to subdivision (b) in connection with a credit transaction not initiated by the consumer shall establish and maintain a notification system, including a toll-free telephone number, that permits any consumer, with appropriate identification and for which the consumer credit reporting agency has a file, to notify the consumer credit reporting agency of the consumer's election to have the consumer's name removed from any list of names and addresses provided by the consumer credit reporting agency, and by any affiliated consumer credit reporting agency, pursuant to paragraph (2) of subdivision (b). Compliance with the requirements of this subdivision by a consumer credit reporting agency shall constitute compliance with those requirements by any affiliate of that consumer credit reporting agency.

(f) Each consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system under paragraph (1) of subdivision (e) jointly with its affiliated consumer credit reporting agencies.

SEC. 2. Section 1785.13 of the Civil Code is amended to read:

1785.13. (a) No consumer credit reporting agency shall make any consumer credit report containing any of the following items of information:

(1) Bankruptcies that, from the date of adjudication, antedate the report by more than 10 years.

(2) Suits and judgments that, from the date of entry or renewal, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Unlawful detainer actions, unless the lessor was the prevailing party. For purposes of this paragraph, the lessor shall be deemed to be the prevailing party only if (A) final judgment was awarded to the lessor (i) upon entry of the tenant's default, (ii) upon the granting of the lessor's motion for summary judgment, or (iii) following trial, or (B) the action was resolved by a written settlement agreement between the parties that states that the unlawful detainer action may be reported. In any other instance in which the action is resolved by settlement agreement, the lessor shall not be deemed to be the prevailing party for purposes of this paragraph.

(4) Paid tax liens that, from the date of payment, antedate the report by more than seven years.

(5) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.

(6) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that in the case of a conviction a full pardon has been granted, or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result.

(7) Any other adverse information that antedates the report by more than seven years.

(b) The seven-year period specified in paragraphs (5) and (7) of subdivision (a) shall commence to run, with respect to any account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency that immediately preceded the collection activity, charge to profit and loss, or similar action. Where more than one of these actions is taken with respect to a particular account, the seven-year period specified in paragraphs (5) and (7) shall commence concurrently for all these actions on the date of the first of these actions.

(c) Any consumer credit reporting agency that furnishes a consumer credit report containing information regarding any case involving a consumer arising under the bankruptcy provisions of Title 11 of the United States Code shall include an identification of the chapter of Title 11 of the United States Code under which the case arose if that can be ascertained from what was provided to the consumer credit reporting agency by the source of the information.

(d) A consumer credit report shall not include any adverse information concerning a consumer antedating the report by more than 10 years or that otherwise is prohibited from being included in a consumer credit report.

(e) If a consumer credit reporting agency is notified by a furnisher of credit information that an open-end credit account of the consumer has been closed by the consumer, any consumer credit report thereafter issued by the consumer credit reporting agency with respect to that consumer, and that includes information respecting that account, shall indicate the fact that the consumer has closed the account. For purposes of this subdivision, ''open-end credit account'' does not include any demand deposit account, such as a checking account, money market account, or share draft account.

(f) Consumer credit reporting agencies shall not include medical information in their files on consumers or furnish medical information for employment, insurance, or credit purposes in a consumer credit report without the consent of the consumer.

(g) A consumer credit reporting agency shall include in any consumer credit report information, if any, on the failure of the consumer to pay overdue child or spousal support, where the information either was provided to the consumer credit reporting agency pursuant to Section 4752 or has been provided to the consumer credit reporting agency and verified by another federal, state, or local governmental agency.

CHAPTER 1013

An act to amend Section 2941 of the Civil Code, relating to mortgages.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 2941 of the Civil Code is amended to read:

2941. (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided in Section 2939, and shall record or cause to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the written request of the mortgagor or the mortgagor's heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

(b) (1) When the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee that may be charged pursuant to subdivision (e), recorder's fees, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known.

(C) Following execution and recordation of the full reconveyance, upon receipt of a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee shall then deliver the original note and deed of trust to the person making that request.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth:

(i) The name of the beneficiary.

(ii) The name of the trustor.

(iii) The recording reference to the deed of trust.

(iv) A recital that the obligation secured by the deed of trust has been paid in full.

(v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(c) The mortgagee or trustee shall not record or cause the certificate of discharge or full reconveyance to be recorded when any of the following circumstances exists:

(1) The mortgagee or trustee has received written instructions to the contrary from the mortgagor or trustor, or the owner of the land, as the case may be, or from the owner of the obligation secured by the deed of trust or his or her agent, or escrow.

(2) The certificate of discharge or full reconveyance is to be delivered to the mortgagor or trustor, or the owner of the land, as the case may be, through an escrow to which the mortgagor, trustor, or owner is a party.

(3) When the personal delivery is not for the purpose of causing recordation and when the certificate of discharge or full reconveyance is to be personally delivered with receipt acknowledged by the mortgagor or trustor or owner of the land, as the case may be, or their agent if authorized by mortgagor or trustor or owner of the land.

(d) For the purposes of this section, the phrases ''cause to be recorded'' and ''cause it to be recorded'' include, but are not limited to, sending by certified mail with the United States Postal Service or by an independent courier service using its tracking service that provides documentation of receipt and delivery, including the signature of the recipient, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office of the county in which the deed of trust or mortgage is recorded. Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge. Compliance with this subdivision shall entitle the trustee to the benefit of the presumption found in Section 641 of the Evidence Code.

(e) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of three hundred dollars ($300). However, a trustee acting in accordance with subdivision (c) shall not be deemed a violator for purposes of this subdivision.

(f) (1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the trustor or mortgagor, or the owner of the land, as the case may be, for all services involved in the preparation, execution, and recordation of the full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect the full reconveyance, and, in addition, may collect official fees. This fee may be made payable no earlier than the opening of a bona fide escrow or no more than 60 days prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

(2) If the fee charged pursuant to this subdivision does not exceed sixty-five dollars ($65), the fee is conclusively presumed to be reasonable.

(g) For purposes of this section, ''original'' may include an optically imaged reproduction when the following requirements are met:

(1) The trustee receiving the request for reconveyance and executing the reconveyance as provided in subdivision (b) is an affiliate or

subsidiary of the beneficiary or an affiliate or subsidiary of the assignee of the beneficiary, respectively.

(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

(h) The amendments to this section enacted at the 1999–2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.

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 1014

An act relating to the payment of claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. (a) The sum of one million four hundred thirty-eight thousand three hundred sixty-five dollars and thirty-eight cents ($1,438,365.38) is hereby appropriated from various funds, as specified in subdivision (b), to the Executive Officer of the State Board of Control to pay claims accepted by the State Board of Control in accordance with the schedule set forth in subdivision (b). Those payments shall be made from the funds and accounts identified in that schedule. In the case of Budget Act item schedules identified in the schedule set forth in

subdivision (b), those payments shall be made from the funds appropriated in the item schedule.

(b) Pursuant to subdivision (a), claims accepted by the State Board of Control shall be paid in accordance with the following schedule:

Total for Fund: A.L.I.A.	$106.50
Total for Fund: Bank and Corporation Tax Fund (0084)	$11,803.03
Total for Fund: California Residential Earthquake Recovery Fund (0285)	$194.52
Total for Fund: Delta Dental Refund Account	$176.90
Total for Fund: Disability Fund (0588)	$672.00
Total for Fund: Earthquake Safety and Public Buildings Rehabilitation Bond Fund of 1990, Fund 0768	$256,528.00
Total for Fund: Employment Development Contingent Fund (0185)	$1,030.25
Total for Fund: General Fund	$36,259.18
Total for Fund: Health Care Deposit Fund (0912)	$2,224.25
Total for Fund: Item 0860–001–0001(a), Budget Act of 2000	$1,710.84
Total for Fund: Item 1100–001–0001(a), Budget Act of 1999	$27,600.19
Total for Fund: Item 2660–001–0042 (b), Budget Act of 2000	$400.00
Total for Fund: Item 2660–001–0042(b), Budget Act of 2000	$12,864.69
Total for Fund: Item 2720–001–0044 (a), Budget Act of 1999	$1,365.00
Total for Fund: Item 2720–001–0044(a), Budget Act of 2000	$1,408.00
Total for Fund: Item 2740–001–0044(f), Budget Act of 1999	$1,023.00
Total for Fund: Item 2920–001–0001(d), Budget Act of 2000	$1,674.28
Total for Fund: Item 3540–001–0001(a), Budget Act of 2000	$5,485.96

Total for Fund: Item 3600–001–0200(a), Budget Act of 2000	$11,000.00
Total for Fund: Item 3600–001–0200(f), Budget Act of 2000	$756.00
Total for Fund: Item 3790–001–0392(a), Budget Act of 2000	$49,600.99
Total for Fund: Item 3790–001–0392(a), Budget Act of 2000	$455.00
Total for Fund: Item 3860–001–0001(b), Budget Act of 2000	$556.00
Total for Fund: Item 3900–001–0044(a), Budget Act of 2000	$955.00
Total for Fund: Item 4130–001–0632, Budget Act of 2000	$700.00
Total for Fund: Item 4170–101–0001(a), Budget Act of 2000	$25.68
Total for Fund: Item 4300–003–0001(a), Budget Act of 1999	$1,194.89
Total for Fund: Item 4300–003–0001(a), Budget Act of 2000	$8,592.30
Total for Fund: Item 4300–101–0001(b), Budget Act of 2000	$104.96
Total for Fund: Item 4440–001–0001(a), Budget Act of 2000	$18,564.60
Total for Fund: Item 4440–001–0001(c), Budget Act of 2000	$695.00
Total for Fund: Item 4440–011–0001(b), Budget Act of 1999	$46.55
Total for Fund: Item 5100–001–0870(a), Budget Act of 2000	$2,147.80
Total for Fund: Item 5100–001–0870(a), Budget Act of 2000	$221.82
Total for Fund: Item 5100–001–0870(b), Budget Act of 2000	$822.00
Total for Fund: Item 5160–001–0001(a), Budget Act of 1999	$272.00
Total for Fund: Item 5160–001–0001(a), Budget Act of 2000	$2,998.23
Total for Fund: Item 5180–001–0001, Budget Act of 1999	$116.36

Total for Fund: Item 5180–001–0001(c), Budget Act of 2000	$366.00
Total for Fund: Item 5180–001–0890, Budget Act of 1999	$294.16
Total for Fund: Item 5180–001–0890, Budget Act of 2000	$755.97
Total for Fund: Item 5240–001–0001(a), Budget Act of 1999	$2,609.62
Total for Fund: Item 5240–001–0001(a), Budget Act of 2000	$19,801.71
Total for Fund: Item 5240–001–0001(b), Budget Act of 1998	$107,902.84
Total for Fund: Item 5240–001–0001(b), Budget Act of 1999	$13,249.68
Total for Fund: Item 5240–001–0001(b), Budget Act of 2000	$319.08
Total for Fund: Item 5240–001–0001(c), Budget Act of 2000	$32,252.57
Total for Fund: Item 5240–001–0001(d), Budget Act of 2000	$840.00
Total for Fund: Item 5240–001–0917(a), Budget Act of 1999	$7,086.83
Total for Fund: Item 5240–001–0001(a), Budget Act of 2000	$762.00
Total for Fund: Item 5460–001–0001(b), Budget Act of 1999	$3,222.86
Total for Fund: Item 6110–001–0001, Budget Act of 2000	$139.00
Total for Fund: Item 6110–001–0001(b), Budget Act of 2000	$2,180.12
Total for Fund: Item 6610–001–0001(a), Budget Act of 2000	$302,206.31
Total for Fund: Item 6870–101–0001(i), Budget Act of 1998	$350,413.00
Total for Fund: Item 7980–001–0001(a), Budget Act of 2000	$3,028.54
Total for Fund: Item 8350–001–0001(9), Budget Act of 1998	$3,023.57
Total for Fund: Item 8350–001–0001(4), Budget Act of 1999	$4,200.00

Total for Fund: Item 8550–001–0191(a), Budget Act of 1998	$30,000.00
Total for Fund: Item 8700–001–0001(c), Budget Act of 2000	$220.32
Total for Fund: Item 8940–001–0890(a), Budget Act of 2000	$980.00
Total for Fund: Item 8955–001–0001(b), Budget Act of 2000	$254.00
Total for Fund: Lighting Device Fund	$40.00
Total for Fund: Motor Vehicle Fuel Account	$500.00
Total for Fund: Retail Sales Tax Fund	$5,688.43
Total for Fund: Senate Operating Fund	$319.90
Total for Fund: Special Deposit Fund	$742.67
Total for Fund: Tax Relief and Refund Account	$57,624.60
Total for Fund: Teachers' Retirement Fund	$640.10
Total for Fund: Transportation Fund, State Highway Account	$13,916.00
Total for Fund: Unclaimed Property Fund	$3,900.00
Total for Fund: Unemployment Compensation Disability Fund	$4,048.93
Total for Fund: Unemployment Fund	$1,686.00
Total for Fund: Welfare Advance Fund	$798.80

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to settle claims against the state and end hardship to claimants as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 1015

An act to amend Section 163 of, and to repeal Section 201.3 of, the Corporations Code, to amend Sections 100, 102, 103, 105, 107, 109, 116, 200, 256, 258, 274, 275, 276, 277, 600, 1500.1, 1800.3, 1913.5,

3100, 3371, 3390, 3391, 3392, 3392.5, 3800, 3824, 3825, 3826, 3827, 3903, 4805.01, 4821.5, 4823, 4826.5, 4827, 4827.7, 4871.5, 4877.03, 4901.5, 12307.4, 18003, 22050, 22154, and 31220 of, to add Sections 105.2, 105.5, 105.7, 107.5, 4805.02, 4805.10, 18003.2 to, to add Chapter 11 (commencing with Section 1400) to Division 1 of, and to repeal Section 139.6 of, the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 163 of the Corporations Code is amended to read:

163. ''Corporation subject to the Banking Law'' (Division 1 (commencing with Section 99) of the Financial Code) means:

(a) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the commercial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(b) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the industrial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(c) Any corporation (other than a corporation described in subdivision (d)) which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the trust business under Division 1 (commencing with Section 99) of the Financial Code.

(d) Any corporation which is authorized by the Commissioner of Financial Institutions and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business; or

(e) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, business under Article 1 (commencing with Section 3500), Chapter 19, Division 1 of the Financial Code.

SEC. 2. Section 201.3 of the Corporations Code is repealed.

SEC. 3. Section 100 of the Financial Code is amended to read:

100. This division is applicable to the following:

(a) All corporations engaging in commercial banking, industrial banking, or the trust business.

(b) All national banking associations authorized to transact business in this state to the extent that the provisions of this division are not inconsistent with and do not infringe paramount federal laws governing national banking associations.

(c) All other corporations as shall subject themselves to the special provisions and sections of this division.

(d) All other persons, associations, copartnerships, or corporations who, by violating any of its provisions, become subject to the penalties provided for in this division.

SEC. 4. Section 102 of the Financial Code is amended to read:

102. The word ''bank'' as used in this division means any incorporated banking institution that shall have been incorporated to engage in commercial banking business, industrial banking, or trust business.

SEC. 5. Section 103 of the Financial Code is amended to read:

103. Banks are divided into the following classes:

(a) Commercial banks.

(b) Industrial banks.

(c) Trust companies.

SEC. 6. Section 105 of the Financial Code is amended to read:

105. ''Commercial bank'' means a corporation organized for the purpose of engaging in the commercial banking business.

SEC. 7. Section 105.2 is added to the Financial Code, to read:

105.2. ''Commercial banking business'' includes, but is not limited to, the business of soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for, or on account of, his or her principal. In addition, ''commercial banking business'' means to lend money on the security of real or personal property or without security; to discount or deal in bills, notes, or other commercial paper; to buy and sell for the account of customers, and, if eligible for investment, for its own account, securities, gold and silver bullion, foreign coins, and bills of exchange; and generally to transact a commercial banking business.

SEC. 8. Section 105.5 is added to the Financial Code, to read:

105.5. ''Industrial bank'' means a corporation organized for the purpose of engaging in the industrial banking business.

SEC. 9. Section 105.7 is added to the Financial Code, to read:

105.7. ''Industrial banking business'' includes the making of loans and acceptance of deposits, including deposits evidenced by investment or thrift certificates, but excluding demand deposits.

SEC. 10. Section 107 of the Financial Code is amended to read:

107. ''Trust company'' means a corporation, industrial bank, or a commercial bank that is authorized to engage in the trust business.

SEC. 11. Section 107.5 is added to the Financial Code, to read:

107.5. It shall be unlawful for any person, corporation, limited liability company, partnership, firm, or any other form of business entity allowed by law, to engage in or transact commercial banking business, industrial banking business, or trust business within this state except by means of a corporation duly organized for that purpose.

SEC. 12. Section 109 of the Financial Code is amended to read:

109. ''Bank'' or ''banks'' includes commercial banks, industrial banks, and trust companies unless the context otherwise requires. However, ''bank'' does not include a savings association or a credit union.

SEC. 13. Section 116 of the Financial Code is amended to read:

116. No corporation shall hereafter be organized under the laws of this state to transact the business of a commercial bank, industrial bank, or trust company except as provided in this division.

SEC. 14. Section 139.6 of the Financial Code is repealed.

SEC. 15. Section 200 of the Financial Code is amended to read:

200. (a) In this section:

(1) ''Business and industrial development corporation'' means a corporation licensed under Division 15 (commencing with Section 31000).

(2) ''Payment instrument'' has the same meaning as set forth in Section 33059.

(3) ''Traveler's check'' has the same meaning as set forth in Section 1852.

(b) There is in the state government, in the Business, Transportation and Housing Agency, a Department of Financial Institutions which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) persons who engage in the business of receiving money for transmission to foreign nations or such business; (5) issuers of traveler's checks or the traveler's check business; (6) issuers of payment instruments or the payment instrument business; (7) business and industrial development corporations or the business and industrial development corporation business, or (8) insurance premium finance agencies or the insurance premium finance business.

SEC. 16. Section 256 of the Financial Code is amended to read:

256. On or before May 31 of each year, the commissioner shall, through the Secretary of the Business, Transportation and Housing Agency, report to the Governor and to the Legislature. The report shall contain the following information:

(a) A list of the California state banks that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(b) A list of the foreign (other nation) banks that were licensed by the commissioner to maintain offices in California as of the end of the preceding calendar year.

(c) A list of the California state savings associations that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(d) A list of the foreign savings associations that were authorized by the commissioner to maintain offices in California as of the end of the preceding calendar year.

(e) A list of the California state credit unions that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(f) A list of the credit unions organized and qualified as credit unions in other states of the United States that were certified by the commissioner to act as credit unions in California as of the end of the preceding calendar year.

(g) A list of the persons that were licensed by the commissioner under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000) to transact business as of the end of the preceding calendar year.

(h) In case during the preceding calendar year the commissioner took possession of the property and business of any California state bank, foreign (other nation) bank, savings association, credit union, or person licensed under any of the laws cited in subdivision (g) to transact business, a list of those California state banks, foreign (other nation) banks, savings associations, credit unions, or licensees.

(i) In case at any time during the preceding calendar year the commissioner was the liquidator of any California state banks, foreign (other nation) banks, savings associations, credit unions, or persons licensed under any of the laws cited in subdivision (g) to transact business, a list of those California state banks, foreign (other nation) banks, savings associations, credit unions, or licensees.

(j) Other information as the commissioner deems appropriate.

SEC. 17. Section 258 of the Financial Code is amended to read:

258. At least once each month, the commissioner shall issue and disseminate as the commissioner deems appropriate a bulletin containing the following information:

(a) Information regarding any the following actions taken since issuance of the previous bulletin:

(1) The filing, approval, or denial under Chapter 3 (commencing with Section 350) of an application for authority to organize a California state bank, or the issuance under Chapter 3 of a certificate of authority to a California state bank.

(2) The filing, approval, or denial under Article 1 (commencing with Section 5400) of Chapter 2 of Division 2 of an application for the issuance of an organizing permit for the organization of a California savings association, or for the issuance under Article 2 (commencing with Section 5500) of Chapter 2 of Division 2 of a certificate of authority to a California savings association.

(3) The filing, approval, or denial under Article 2 (commencing with Section 14150) of Chapter 2 of Division 5 of an application for a certificate to act as a credit union, or the issuance of a certificate to engage in the business of a credit union.

(4) The filing, approval, or denial under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000) of an application for a license to engage in business, or the issuance under any of those laws of a license to engage in business.

(5) The filing, approval, or denial under Chapter 13.5 (commencing with Section 1700) of an application by a foreign (other nation) bank to establish its first office of any particular class (as determined under Section 1701) in this state, or the issuance under that chapter of a license in connection with the establishment of such an office.

(6) The filing, approval, or denial under Division 1.5 (commencing with Section 4800) of an application for approval of a sale, merger, or conversion.

(7) The filing, approval, or denial under Article 6 (commencing with Section 5700) of Chapter 2 of Division 2 of an application for approval of a conversion of a federal savings association into a state savings association, or the filing of a federal charter of a state savings association that has converted to a federal savings association.

(8) The filing, approval, or denial under Article 7 (commencing with Section 5750) of Chapter 2 of Division 2 of an application for approval of a reorganization, merger, consolidation, or transfer of assets of a state savings association.

(9) The filing, approval, or denial under Chapter 9 (commencing with Section 15200) of Division 5 of an application for approval of a merger, dissolution, or conversion of a credit union.

(10) The taking of possession of the property and business of a California state bank, savings association, credit union, or person licensed by the commissioner under any of the laws cited in paragraph (2).

(b) Other information as the commissioner deems appropriate.

SEC. 18. Section 274 of the Financial Code is amended to read:

274. Except as otherwise provided in Section 276 or 277, all salaries and other expenses of the department, other than those incurred in administering laws relating to savings associations or the savings association business, credit unions or the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, shall be paid out of the State Banking Account in the Financial Institutions Fund. Salaries and other expenses incurred in the liquidation or conservation of any bank (other than an industrial bank) or of any person licensed under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000), including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the State Banking Account in the Financial Institutions Fund, shall constitute a first charge against the assets of the bank or licensee, as the case may be. Salaries and other expenses incurred in the liquidation or conservation of any industrial bank, including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the Industrial Bank Account in the Financial Institutions Fund, shall constitute a first charge against the assets of the industrial bank.

SEC. 19. Section 275 of the Financial Code is amended to read:

275. The commissioner shall deliver all moneys received or collected by the commissioner under Section 270, 271, or 272 or otherwise, other than moneys received or collected by the commissioner under laws relating to savings associations, the savings association business, credit unions, the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to the Treasurer, who shall deposit the moneys to the credit of the State Banking Account of the Financial Institutions Fund.

SEC. 20. Section 276 of the Financial Code is amended to read:

276. (a) In this section, ''assessment statute'' means any statute that authorizes the commissioner to make or collect an assessment (other than a fine) on financial institutions, including the following:

(1) Sections 270 to 271.5, inclusive.

(2) Section 1801.1.

(3) Section 33302.

(4) Article 2 (commencing with Section 8030) of Chapter 7 of Division 2.

(5) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

(6) Section 1402.

(b) The commissioner may charge to and collect from the Financial Institutions Fund, the Credit Union Fund, each of the accounts included in the Financial Institutions Fund, and each of the programs included in the State Banking Account an amount equal to the fund's, account's, or program's pro rata share of those expenses of the department which, in the opinion of the commissioner, it is not feasible to attribute to any single one of the funds, accounts, or programs. The fund's, account's, or program's pro rata share shall be determined and paid in the manner and at the time ordered by the commissioner.

(c) The provisions of any assessment statute that authorize the commissioner to make or collect an assessment for the purposes specified in the assessment statute include authority for the commissioner to make and collect an assessment for the additional purpose of providing money in an amount that will, in the commissioner's judgment, be sufficient to make payments that may be required under subdivision (b).

SEC. 21. Section 277 of the Financial Code is amended to read:

277. Notwithstanding any other provision of this code or of Section 53667 of the Government Code, the commissioner may, at any time during a fiscal year, pay any expense of the department from any of the following accounts and funds: the State Banking Account, the Savings and Loan Account, the Industrial Bank Account, the Financial Institutions Fund, the Credit Union Fund, and the Local Agency Deposit Security Fund. However, if the commissioner pays an expense of the department from an account or fund from which the expense is not, except for this section, permitted to be paid, the commissioner shall, as of a date within that fiscal year, reimburse the account or fund from which the expense was paid by making a transfer from the account or fund from which the expense would have been permitted to be paid.

SEC. 22. Section 600 of the Financial Code is amended to read:

600. The articles of each bank shall contain the applicable one of the following statements:

(a) In case the bank is, or is proposed to be, a commercial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank.

(b) In case the bank is, or is proposed to be, a commercial bank authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank authorized to engage in trust business.

(c) In case the bank is, or is proposed to be, an industrial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank.

(d) In case the bank is, or is proposed to be, an industrial bank authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank authorized to engage in trust business.

(e) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a trust company.

SEC. 23. Chapter 11 (commencing with Section 1400) is added to Division 1 of the Financial Code, to read:

CHAPTER 11. INDUSTRIAL BANKS

Article 1. General Provisions

1400. Chapter 11 (commencing with Section 1400) of Division 1 is a restatement of Division 7 (commencing with Section 18000) as that division pertains to the licensing and regulation of industrial banks and to the insurance of deposits of industrial banks. Chapter 11 is a continuation, simplification, and recodification of the licensing and regulation of deposit-taking industrial banks.

1401. (a) Any reference in a provision of any statute or regulation of this state to banks or commercial banks includes industrial banks.

(b) Subdivision (a) does not apply in any of the following cases:

(1) In case the provision or a related provision expressly provides otherwise.

(2) In the case of any provision of Division 1.5 (commencing with Section 4800) or this division.

1402. The Industrial Loan Account of the Financial Institutions Fund is renamed to be the Industrial Bank Account.

1403. (a) The commissioner shall annually levy on and collect from industrial banks authorized to transact industrial banking business in this state, pro rata on the basis of total assets, an assessment in a total amount that is sufficient in the commissioner's judgment to (1) meet the expenses of the department in administering laws relating to industrial banks or to the industrial banking business that are not otherwise provided for and (2) provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment on any industrial bank authorized to transact the industrial banking business shall be the greater (1) five thousand dollars ($5,000) or (2) the sum of the products determined by multiplying (A) increments of the bank's or trust company's total assets by (B) percentages of the base assessment rate according to the following table:

Total Assets (In Percentage of Base Millions)	Assessment Rate
First $2	100.0
Next $18	50.0
Next $80	12.0
Next $100	6.25
Next $800	6.0
Next $1,000	4.0
Next $4,000	3.5
Next $14,000	3.0
Next $20,000	2.5
Excess over $40,000	1.5

(c) (1) For purposes of the annual assessment, the total assets of an industrial bank authorized to transact industrial banking business shall be determined as of a date fixed by the commissioner. However, if an industrial loan company is not authorized to transact industrial banking business as of that date but is so authorized as of the date when the annual assessment is levied, its total assets for purposes of the annual assessment shall be determined as of the date of the levy.

(2) (A) In determining for purposes of the annual assessment on the total assets of industrial banks that are authorized to transact industrial banking business and that have one or more foreign (other state) branch offices or facilities, the assets of the foreign (other state) branch offices and facilities shall be excluded from total assets. However, the

commissioner may order the assets of foreign (other state) branch offices and facilities to be included in total assets if and to the extent that it is necessary or advisable in the commissioner's judgment to (i) meet the expenses of the department on account of foreign (other state) branch offices and facilities that are not otherwise provided for and (ii) provide a reasonable reserve for contingencies.

(B) If the commissioner finds that an industrial bank authorized to transact industrial banking business allocated any asset to a foreign (other state) branch office or facility for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment on the industrial bank, reallocate the asset to the industrial bank's head office.

(d) The base assessment rate for each annual assessment shall be fixed by the commissioner but shall not exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total assets.

Article 2. Business of Industrial Banks

1410. Each industrial bank shall be an insured bank at all times while it is engaged in the industrial banking business.

1411. Subject to any order or regulation of the commissioner, an industrial bank may accept deposits evidenced by investment or thrift certificates, which are redeemable prior to their stated maturity, but may not accept demand deposits.

1412. In addition to other provisions of this division that are otherwise applicable to an industrial bank, the following provisions of this division apply to the industrial bank as if it were a California state commercial bank:

(a) Chapter 4 (commencing with Section 490).
(b) Chapter 5 (commencing with Section 600).
(c) Chapter 6 (commencing with Section 750).
(d) Chapter 6.5 (commencing with Section 800).
(e) Chapter 7 (commencing with Section 850).
(f) Chapter 8 (commencing with Section 952).
(g) Chapter 10 (commencing with Section 1200).
(h) Chapter 12 (commencing with Section 1500).
(i) Chapter 13 (commencing with Section 1650).
(j) Chapter 15 (commencing with Section 1900).
(k) Chapter 17 (commencing with Section 3100).
(*l*) Chapter 18 (commencing with Section 3350).
(m) Chapter 20 (commencing with Section 3600).
(n) Chapter 21 (commencing with Section 3700).
(o) Chapter 21.5 (commencing with Section 3750).
(p) Chapter 22 (commencing with Section 3800).

(q) Division 1.5 (commencing with Section 4800).

SEC. 24. Section 1500.1 of the Financial Code is amended to read:

1500.1. Any commercial bank or industrial bank, with the prior authorization of the commissioner, may engage in the trust business, if its articles comply with the requirements of subdivision (b) of Section 600. Any bank so authorized shall, in the conduct of its trust business, comply with and be governed by all of the provisions of this chapter, except the provisions of Section 1560. An application for such authorization shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of one thousand dollars ($1,000).

SEC. 25. Section 1800.3 of the Financial Code is amended to read:

1800.3. (a) No person shall engage in the business of receiving money for the purpose of transmitting the same or its equivalent to foreign countries without first obtaining a license from the commissioner.

(b) This chapter shall not apply to any of the following:

(1) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank which is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 or which is authorized under federal law to maintain a federal agency or federal branch office in this state.

(2) A trust company licensed pursuant to Section 401 or a national association authorized under federal law to engage in a trust banking business.

(3) An association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor.

(4) Any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

SEC. 26. Section 1913.5 of the Financial Code is amended to read:

1913.5. (a) For the purposes of this section, the following definitions are applicable:

(1) ''Account holder'' includes, in the case of a deposit account, the depositor; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position that is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) ''Bank'' means the following:

(A) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(B) Any foreign (other state) state bank that maintains a branch office in this state, with respect to the branch office and any other office in this state.

(C) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state, with respect to that office.

(D) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state, with respect to that office.

(E) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(F) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19, with respect to that office.

(3) ''Order'' means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including, without limitation, any condition thereof. ''Order'' does not include any certificate of authority or license issued by the commissioner but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) ''Subject person of a bank'' means any director, officer, or employee of the bank, or any person who participates in the conduct of the business of the bank. However, ''subject person of a bank'' does not include a controlling person of the bank that is registered as a bank holding company with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. Sections 1841, et seq.). ''Subject person of a bank'' does not include an individual who is a director, officer, or employee of a controlling person of the bank unless the individual is a director, officer, or employee of the bank or participates in the conduct of the business of the bank. For purposes of this paragraph, ''controlling person'' has the meaning set forth in Section 700.

(5) ''Violation'' includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation.

(b) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank

and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the bank; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the bank; or

(C) That the subject person has committed or engaged in any act that constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the bank has suffered or will probably suffer substantial financial loss or other damage by reason of the violation, act, or breach of fiduciary duty; or

(B) That the interests of the bank's accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of the violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one that demonstrates a willful or continuing disregard for the safety or soundness of the bank.

(c) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That the subject person's conduct or practice with respect to another bank or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other bank or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the bank.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the bank or the interests of the bank's accountholders that the commissioner issue the order immediately; and

(2) (A) That any of the factors set forth in paragraph (1) of subdivision (b), any of the factors set forth in paragraph (2) of subdivision (b), and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraph (1) of subdivision (c), any of the factors set forth in paragraph (2) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank. In case the criminal proceedings are terminated other than by a judgment of conviction, the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank, or a former subject person of a bank, from his or her office, if any, with the bank and prohibiting the person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(A) That the person has been finally convicted of a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank.

(3) The fact that any subject person of a bank charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner from issuing an order

regarding the subject person pursuant to other provisions of this division.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period to which the person consents, the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

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

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

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

(h) (1) A notice issued under this section shall state the facts constituting the grounds for removal, suspension, or prohibition.

(2) A hearing held before the commissioner pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the view of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of a bank or former subject person of a bank to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any bank.

(B) To vote any shares or other securities of a bank having voting rights, for the election of any person as a director of the bank.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any bank having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any bank.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both that fine and imprisonment.

(3) If, after notice and a hearing, the commissioner finds that any person has violated paragraph (1), the commissioner may order that person to pay to the commissioner a civil penalty in an amount as the commissioner may specify, provided that the amount of the civil penalty shall not exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day for which the violation continues.

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

SEC. 27. Section 3100 of the Financial Code is amended to read:

3100. The commissioner may, whenever it appears to him or her that any of the conditions described in subdivisions (a) to (h), inclusive, exist with respect to a bank, forthwith take possession of the property and business of the bank and retain possession until the bank resumes business or its affairs are finally liquidated as herein provided. The bank, with the consent of the commissioner, may resume business subject to any conditions that may be prescribed by the commissioner. The term ''bank'' wherever used in this chapter includes trust companies.

(a) The tangible shareholders' equity of the bank is less than:

(1) In case the bank is a commercial bank or industrial bank, the greater of three percent of the bank's total assets or one million dollars ($1,000,000); or

(2) In case the bank is a trust company other than a commercial bank authorized to engage in trust business, one million dollars ($1,000,000).

(b) The bank has violated its articles or any law of this state.

(c) The bank is conducting its business in an unsafe or unauthorized manner.

(d) The bank refuses to submit its books, papers, and affairs to the inspection of any examiner.

(e) Any officer of the bank refuses to be examined upon oath touching the concerns of the bank.

(f) The bank has failed to pay any of its obligations as they came due or that is reasonably expected to be unable to pay its obligations as they come due.

(g) The bank is in a condition that it is unsound, unsafe, or inexpedient for it to transact business.

(h) The bank neglects or refuses to observe any order of the commissioner made pursuant to Section 1913 unless the enforcement of the order is restrained in a proceeding brought by the bank.

SEC. 28. Section 3371 of the Financial Code is amended to read:

3371. As used in this article:

(a) ''Bank'' means:

(1) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) Any foreign (other nation) bank that is licensed by the commissioner under Article 3 (commencing with Section 1750) of Chapter 13.5 of this division to maintain a depositary agency or branch office (as defined in Section 1700) in this state, with respect to any office of that type.

(3) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(4) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 of this division to maintain an office in this state and to transact at the office business under that article, with respect to any office of that type.

(5) When used to designate a person that extends credit, any subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).

(b) ''Company'' has the meaning set forth in subdivision (b) of Section 215.2 of Regulation O.

(c) ''Executive officer'' has the meaning set forth in paragraph (1) of subdivision (e) of Section 215.2 of Regulation O. Also, ''executive officer,'' when used with respect to any bank of the type described in paragraph (2) or (4) of subdivision (a), includes the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) that the bank maintains in this state.

(d) ''Extension of credit'' has the meaning set forth in Section 215.3 of Regulation O. However, for purposes of this subdivision, the term ''member bank,'' as used in Section 215.3, means a bank.

(e) ''Regulation O'' means Regulation O (Part 215 (commencing with Section 215.1) of Title 12 of the Code of Federal Regulations) of the Board of Governors of the Federal Reserve System, as amended from time to time.

(f) ''Subsidiary'' has the meaning set forth in Section 1841(d) of Title 12 of the United States Code. However, for purposes of this subdivision, the term ''bank holding company,'' as used in Section 1841(d) of Title 12 of the United States Code, means a bank holding company, as defined in Section 1841(a) of Title 12 of the United States Code, or a bank, and the term ''board,'' as used in Section 1841(d) of Title 12 of the United States Code, means the commissioner.

SEC. 29. Section 3390 of the Financial Code is amended to read:

3390. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall solicit or receive deposits, issue certificates of deposit with or without provision for interest, make payments on check, or transact business in the way or manner of a commercial bank, industrial bank, or trust company.

SEC. 30. Section 3391 of the Financial Code is amended to read:

3391. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall advertise that it is accepting deposits, and issuing notes or certificates therefor, or make use of any office sign, at the place where its business is transacted, having thereon any artificial or corporate name, or other words indicating that the place or office is the place or office of a bank or trust company, that deposits are received there or payments made on check, or any other form of banking business is transacted, nor shall any person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed paper, whatever, having thereon any artificial or corporate name or other words indicating that the business is the business of a bank or trust company, or transact business in a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this division.

SEC. 31. Section 3392 of the Financial Code is amended to read:

3392. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall transact business under any name or title which contains the word ''bank'' or ''banker'' or ''banking'' or ''industrial bank'' or ''industrial loan company'' or ''investment and loan'' or ''savings bank'' or ''thrift and loan'' or ''trust'' or ''trustee'' or ''trust company'' and which indicates that the business is the business of a bank or trust company. Any building and loan association or savings association having in its corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, ''This is a building and loan association'' or ''This is a savings association'' or words to that effect.

SEC. 32. Section 3392.5 of the Financial Code is amended to read:

3392.5. No provision of Section 3390, 3391, or 3392 prohibits any of the following from transacting any business or performing any activity if it is authorized by applicable law to transact the business or perform the activity and is not prohibited by any applicable law (other than Sections 3390, 3391, and 3392) from transacting the business or performing the activity:

(a) Any California state commercial bank, industrial bank, or trust company.

(b) Any national bank.

(c) Any insured foreign (other state) state bank.

(d) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state.

(e) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state.

(f) Any foreign (other nation) bank that maintains a federal agency (as defined in subdivision (g) of Section 1700) or federal branch (as defined in subdivision (h) of Section 1700) in this state.

(g) Any California state corporation that is incorporated for the purpose of engaging in, and that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(h) Any corporation incorporated under Section 25A of the Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

(i) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19.

(j) Any industrial bank that is organized under the laws of another state of the United States and is insured by the Federal Deposit Insurance Corporation.

SEC. 33. Section 3800 of the Financial Code is amended to read:

3800. In this chapter, unless the context otherwise requires:

(a) ''Branch business unit'' has the meaning set forth in subdivision (a) of Section 4840.

(b) ''Core banking business'' means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. ''Core banking business,'' when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.

(c) ''Facility,'' when used with respect to a foreign (other state) bank, means an office in this state at which the bank engages in noncore

banking business but at which it does not engage in core banking business.

(d) ''Noncore banking business'' means all activities permissible for commercial banks, industrial banks, or trust companies, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.

(e) ''Whole business unit'' has the meaning set forth in subdivision (g) of Section 4840.

SEC. 34. Section 3824 of the Financial Code is amended to read:

3824. (a) (1) No foreign (other state) bank may merge as the surviving corporation with a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.5 (commencing with Section 4800).

(2) No foreign (other state) bank may purchase the whole business unit of a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.5 (commencing with Section 4800).

(3) No foreign (other state) bank that does not already maintain a California branch office may establish or maintain a California branch office except in the manner described in paragraph (1) or (2) and in accordance with federal law, the law of the domicile of the foreign (other state) bank, and this chapter.

(b) This section constitutes:

(1) An election to permit early interstate merger transactions pursuant to Section 44(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(3)).

(2) An express prohibition against interstate branching through the acquisition of a branch business unit located in this state of a California bank (without acquisition of the whole business unit of the California bank) pursuant to Section 44(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(4)).

(3) An express prohibition against interstate branching through de novo establishment of California branch offices pursuant to Section 5155 of the Revised Statutes (12 U.S.C. Sec. 36) or Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(d)).

SEC. 35. Section 3825 of the Financial Code is amended to read:

3825. (a) No foreign (other state) bank that does not already maintain a California branch office may:

(1) Merge as the surviving bank with a California bank pursuant to paragraph (1) of subdivision (a) of Section 3824, unless the California bank has been in existence for at least five years.

(2) Purchase the whole business unit of a California bank pursuant to paragraph (2) of subdivision (a) of Section 3824 unless the California bank has been in existence for at least five years.

(b) For purposes of this section, a California bank that is established solely for the purpose of, and does not open for business prior to, acquiring the whole business unit of a second California bank through a merger or purchase is deemed to have been in existence for the same period of time as the second California bank.

SEC. 36. Section 3826 of the Financial Code is amended to read:

3826. The minimum age requirement set forth in Section 3825 does not apply in any case in which the factor set forth in subdivision (a) and any of the factors set forth in subdivision (b) apply.

(a) The foreign (other state) bank, by itself or in concurrent transactions with other depository corporations (as defined in Section 4805.06), acquires the whole business unit of the California bank or, if the California bank has been closed or placed in conservatorship, all or substantially all of the insured deposits of the California bank.

(b) (1) If the California bank is a national bank, one of the following:

(A) The bank is in default or in danger of default, as defined in Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(x)).

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(2) If the California bank is a state bank, one of the following:

(A) The commissioner has taken possession of the property and business of the bank pursuant to Section 3100.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 3100 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

SEC. 37. Section 3827 of the Financial Code is amended to read:

3827. (a) In case a foreign (other state) state bank that maintains a California branch office is a commercial bank, in addition to other provisions of this division that are otherwise applicable to the bank, the following provisions of this division apply to the bank with respect to its business in this state as if the bank were a California state commercial bank:

(1) Sections 764, 765, 775, 777.5, and 779.

(2) Chapter 7 (commencing with Section 850).

(3) Chapter 8 (commencing with Section 952).

(4) Sections 1227.2, 1227.3, 1338, 1380, 1381, and 1382.

(5) Chapter 13 (commencing with Section 1650).

(6) Article 1 (commencing with Section 3350) of Chapter 18.

(7) Chapter 20 (commencing with Section 3600).

(b) In case a foreign (other state) state bank that maintains a California branch office is an industrial bank, in addition to other provisions of this division that are otherwise applicable to the bank, the provisions cited in paragraphs (1) to (7), inclusive, of subdivision (a) and the provisions of Chapter 11 (commencing with Section 1400) apply to the industrial bank with respect to its business in this state as if the bank were a California state industrial bank.

(c) In case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, in addition to other provisions of this division that are otherwise applicable to the bank, the following provisions of Chapter 12 (commencing with Section 1500) apply to the bank with respect to its business in this state as if the bank were a California state bank authorized to transact trust business:

(1) Article 3 (commencing with Section 1540). For purposes of Article 3 (commencing with Section 1540), the bank's principal place of business is deemed to be situated in the city in which its California branch office is located or, if it maintains California branch offices in two or more cities, in the city with the largest population.

(2) Article 4 (commencing with Section 1560), except Section 1560.

(3) Article 5 (commencing with Section 1580), except Sections 1583, 1584, 1585, 1588, and 1590.

(d) Subject to the provisions of subdivision (d), in case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, the bank may engage in and conduct trust business in this state and may be appointed by any court to act in any fiduciary capacity in which a California state trust company is authorized to act.

(e) No foreign (other state) state bank that maintains a California branch office may transact at the branch office any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(f) Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to a foreign (other state) state bank that maintains a California branch office is inconsistent with any provision of any other chapter of this division, the former provision applies, and the latter provision does not apply.

SEC. 38. Section 3903 of the Financial Code is amended to read:

3903. If the commissioner finds, with respect to an application for a certificate of approval of the subject name of a nonbank corporation, that the subject name does not indicate that the nonbank corporation is

engaged in the banking, industrial banking, or trust business, the commissioner shall issue a certificate of approval of the subject name. If the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 39. Section 4805.01 of the Financial Code is amended to read:

4805.01. Subject to additional definitions contained in this division that are applicable to specific provisions of this division and unless the context otherwise requires:

(a) The definitions in this article apply throughout this division.

(b) The definitions in Chapter 1 (commencing with Section 99) of Division 1 and in Section 1700 apply throughout this division. For this purpose, ''this division,'' as used in Sections 123 and 124, means:

(1) In the case of a California state bank, Division 1 (commencing with Section 99) and this division.

(2) In the case of a California state savings association, this division and Division 2 (commencing with Section 5000).

SEC. 40. Section 4805.02 is added to the Financial Code, to read:

4805.02. (a) In this division, ''bank'' means a commercial bank or trust company (other than an industrial loan company authorized to engage in trust business). ''Bank'' does not include an industrial loan company.

(b) Notwithstanding subdivision (a), ''foreign (other nation) bank'' has the meaning set forth in Section 139.4(b)(1).

SEC. 41. Section 4805.10 is added to the Financial Code, to read:

4805.10. In this division, ''industrial loan company'' means an industrial bank as defined in Section 105.5.

SEC. 42. Section 4821.5 of the Financial Code is amended to read:

4821.5. Any certificate of authority, license, or other authorization issued under subdivision (b) of Section 4858, subdivision (b) of Section 4877.13, subdivision (b) of Section 4888, subdivision (b) of Section 4928, or Section 4948 or 4949 is deemed to have been issued under the provisions of Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) that would otherwise apply to the issuance of the certificate of authority, license, or other authorization.

SEC. 43. Section 4823 of the Financial Code is amended to read:

4823. References in this division to shareholders' equity mean shareholders' equity determined in accordance with generally accepted accounting principles, subject (a) in the case of California state banks or California industrial loan companies, to the provisions of Section 118, and (b) in the case of California state savings associations, to the provisions of Division 2 (commencing with Section 5000).

SEC. 44. Section 4826.5 of the Financial Code is amended to read:

4826.5. Notwithstanding any other provision of this division:

(a) The provisions of Chapter 22 (commencing with Section 3800) of Division 1 apply to any transaction which is subject to this division. Whenever any provision of Chapter 22 (commencing with Section 3800) of Division 1 or of any regulation or order issued under Chapter 22 (commencing with Section 3800) of Division 1 is inconsistent with any provision of this division or of any regulation or order issued under this division, the provision of Chapter 22 (commencing with Section 3800) of Division 1 or of the regulation or order issued under Chapter 22 (commencing with Section 3800) of Division 1 applies, and the provision or this division or of the regulation or order issued under this division does not apply.

(b) Nothing in this division authorizes any sale or merger in a case where the purchasing or surviving depository corporation is a foreign depository corporation if the sale or merger is prohibited by Chapter 22 (commencing with Section 3800) of Division 1.

(c) Nothing in this division constitutes an election by this state under federal law to prohibit or permit interstate sales or mergers between banks or industrial loan companies.

SEC. 45. Section 4827 of the Financial Code is amended to read:

4827. Except as expressly provided otherwise in this division:

(a) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state savings association, in which the purchasing or surviving depository corporation is a California state bank, a California industrial loan company, or a California state-licensed foreign (other nation) bank, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 (commencing with Section 5000).

(2) No conversion in which the converting depository corporation is a California state savings association in which the resulting depository corporation is a California state bank or a California industrial loan company, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2.

(b) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state savings association, and which may be effected with the approval of the

commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1.

(2) No conversion in which the converting depository corporation is a California state bank or a California industrial loan company, in which the resulting depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1.

SEC. 46. Section 4827.7 of the Financial Code is amended to read:

4827.7. (a) (1) Except as otherwise provided in paragraph (2):

(A) No California state depository corporation may, as the selling or disappearing depository corporation, make a sale or merger pursuant to this division in which it would transfer to a California state-licensed or federally licensed foreign (other nation) bank any deposit or fiduciary account that the foreign bank is not authorized to accept.

(B) No California state-licensed foreign (other nation) bank may, as the purchasing or surviving depository corporation, make a sale or merger pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Section 1755, a California state depository corporation may, as the selling or disappearing depository corporation, make a sale or merger pursuant to this division in which it transfers to a California state-licensed or federally licensed foreign (other nation) bank deposits or fiduciary accounts that the foreign bank is not authorized to accept, and a California state-licensed foreign (other nation) bank may, as the purchasing or surviving depository corporation, make a sale or merger pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale or merger, the foreign bank, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposits and fiduciary accounts to a depository corporation that is authorized to accept them.

(b) (1) Except as otherwise provided in paragraph (2):

(A) No California state bank or industrial loan company may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would transfer to a savings association any deposit or fiduciary account that the savings association is not authorized to accept.

(B) No California state savings association may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Division 2 (commencing with Section 5000), a California state bank or industrial loan company may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it transfers to a savings association deposits or fiduciary accounts that the savings association is not authorized to accept, and a California state savings association may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale, merger, or conversion, the savings association, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposits and fiduciary accounts to a depository corporation that is authorized to accept them.

(c) (1) Except as otherwise provided in paragraph (2):

(A) No California state bank or savings association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would transfer to an industrial loan company any deposit or fiduciary account that the industrial loan company is not authorized to accept.

(B) No California industrial loan company may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Division 1 (commencing with Section 99), a California state bank or savings and loan association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it transfers to an industrial loan company deposits or fiduciary accounts that the industrial loan company is not authorized to accept, and a California industrial loan company may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale, merger, or conversion, the industrial loan

company, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposit accounts and fiduciary accounts to a depository corporation that is authorized to accept them.

SEC. 47. Section 4871.5 of the Financial Code is amended to read:

4871.5. (a) No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts a sale in a case where the seller is a California state bank or a California industrial loan company.

(b) No provision of Division 2 (commencing with Section 5000) prohibits or restricts a sale in a case where the seller is a California state savings and loan association.

SEC. 48. Section 4877.03 of the Financial Code is amended to read:

4877.03. No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts a sale in a case where the seller is a California state bank or a California industrial loan company.

SEC. 49. Section 4901.5 of the Financial Code is amended to read:

4901.5. (a) No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts the merger of a California state bank or California industrial loan company.

(b) No provision of Division 2 (commencing with Section 5000) prohibits or restricts the merger of a California state savings and loan association.

SEC. 50. Section 12307.4 of the Financial Code is amended to read:

12307.4. Whenever the commissioner has taken possession of the property and business of a licensee the commissioner may petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee. During the time that the commissioner retains possession of the property and business of a licensee the commissioner shall have the same powers and authority with reference to the licensee as are vested in the Commissioner of Financial Institutions with respect to banks pursuant to Chapter 17 (commencing with Section 3100) of Division 1 and the licensee shall likewise have the same rights to hearings and judicial review as are granted to banks. While in possession of the property and business of a check seller, a receiver shall have the same powers and authority as are vested in the Commissioner of Financial Institutions while in possession of the property and business of a bank.

SEC. 51. Section 18003 of the Financial Code is amended to read:

18003. ''Industrial loan company,'' ''thrift and loan company,'' or ''company'' as used in this division means a premium finance agency as defined in Section 18560. Notwithstanding any other provision of this chapter, these terms and this division do not apply to an industrial bank

subject to and governed by Chapter 11 (commencing with Section 1400) of Division 1.

SEC. 52. Section 18003.2 is added to the Financial Code, to read:

18003.2. (a) Any reference in a provision of any statute or regulation of this state to an industrial loan company or a thrift and loan company means an insurance premium finance agency as defined in Section 18560.

(b) Subdivision (a) does not apply in any of the following cases:

(1) In case the provision or a related provision expressly provides otherwise.

(2) In the case of any provision of Division 1 (commencing with Section 99) or Division 1.5 (commencing with Section 4800).

SEC. 53. Section 22050 of the Financial Code is amended to read:

22050. (a) This division does not apply to any person doing business under any law of this state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, California business and industrial development corporations, or licensed pawnbrokers.

(b) This division does not apply to a broker-dealer acting pursuant to a certificate, then in effect, issued pursuant to Section 25211 of the Corporations Code.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a check cashier who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit.

(e) This division does not apply to any person who makes no more than one loan in a 12-month period as long as that loan is a commercial loan as defined in Section 22502.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

SEC. 54. Section 22154 of the Financial Code is amended to read:

22154. (a) No licensee shall conduct the business of making loans under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the

other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization once granted remains in effect until revoked by the commissioner.

(b) The products or services of an affiliated corporation of the licensee that is a supervised financial institution, or a parent or subsidiary of a supervised financial institution that is an affiliate of the licensee, may be provided, offered, or sold at the licensed location of the licensee without authorization by the commissioner pursuant to subdivision (a) if (1) the activity is not prohibited by, or in violation of, the laws applicable to the affiliate or supervised financial institution, and (2) the products and services are not offered and sold in a manner that restricts the ability of the borrower or customer to individually select or reject a product or service that is offered.

(c) The following definitions govern the construction of this section:

(1) ''Affiliated'' or ''affiliate'' means the following: A corporation is an affiliate of, or a corporation is affiliated with, another specified corporation if it directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other specified corporation.

(2) ''Supervised financial institution'' means any commercial bank, industrial bank, credit card bank, trust company, savings and loan association, savings bank, credit union, California finance lender, residential mortgage lender or servicer, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

SEC. 55. Section 31220 of the Financial Code is amended to read:

31220. Notwithstanding any other law of this state, but subject to the provisions of Section 31550:

(a) Any commercial bank, industrial bank, or trust company organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by the commercial bank, industrial bank, or trust company shall not at any time exceed $2^1/_2$ percent of the shareholders' equity of the commercial bank, industrial bank, or trust company. This subdivision shall not apply to any loan or other extension of credit made by a commercial bank or industrial bank organized under the laws of this state to a licensee in accordance with the Banking Law (Division 1 (commencing with Section 99)).

(b) Any savings association organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such savings

association shall not at any time exceed $^1/_2$ percent of the total outstanding loans of such savings association.

(c) Any insurance company admitted to transact insurance business in this state may, with the approval of the Insurance Commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such insurance company shall not at any time exceed $2^1/_2$ percent of the unassigned surplus of such insurance company.

(d) Any public utility licensed or regulated by the Public Utilities Commission may, with the approval of the Public Utilities Commission, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such public utility company shall not at any time exceed $^1/_2$ percent of the total assets of such public utility company.

SEC. 56. In Sections 57 to 59, inclusive, of this act:

(a) (1) ''Industrial Loan Law'' means the Industrial Loan Law (Division 7 (commencing with Section 18000) of the Financial Code) as in effect immediately prior to the operative date of this act.

(2) ''Order'' means any approval, written approval, consent, exemption, denial, prohibition, requirement, or other administrative action, applicable to a specific case. ''Order'' does not include any certificate of authorization but does include any condition of a certificate of authorization. Also, order includes any written agreement with the commissioner.

(3) ''Revised Banking Law'' means the Banking Law (Division 1 (commencing with Section 99) of the Financial Code) as in effect on the operative date of this act.

(4) ''Subject industrial bank'' means a California corporation which, immediately prior to the operative date of this act, was authorized under the Industrial Loan Law to operate as an industrial loan company. However, ''subject industrial bank'' does not include any subject insurance premium finance agency as defined in Section 18560 of the Financial Code.

(b) Except as otherwise provided in subdivision (a), the definitions in Chapter 1 (commencing with Section 99) of the Revised Banking Law apply.

SEC. 57. (a) (1) Each subject industrial bank shall, as of the operative date of this act, be deemed to be authorized under the Revised Banking Law to transact industrial banking business.

(2) The commissioner shall, as of the operative date of this act, issue to each subject industrial bank a certificate of authority authorizing it to transact industrial banking business at the location which was the location of its head office immediately prior to the operative date of this

act. The certificate of authority shall be deemed to be issued under Section 401 of the Revised Banking Law.

(b) In case a subject industrial bank, immediately prior to the operative date of this act, was authorized under the Industrial Loan Law to, and did, maintain a branch office at any location:

(1) The subject industrial bank shall, as of the operative date of this act, be deemed to be authorized to open and operate a branch office at the location.

(2) The commissioner shall, as of the operative date of this act, issue to the subject industrial bank a certificate of authority authorizing it to open and operate a branch office at the location. The certificate of authority shall be deemed to be issued pursuant to Section 504 of the Revised Banking Law.

(c) In case a subject industrial bank, immediately prior to the operative date of this act, was authorized under the Industrial Loan Law to, and did, maintain a place of business at any location:

(1) The subject industrial bank shall, as of the operative date of this act, be deemed to be authorized under the Revised Banking Law to open and operate a place of business at the location.

(2) The commissioner shall, as of the operative date of this act, issue to the subject industrial bank a certificate of authority authorizing it to open and operate a place of business at the location. The certificate of authority shall be deemed to be issued pursuant to Section 544 of the Revised Banking Law.

(d) (1) Each certificate of authority which was issued to a subject industrial bank under the Industrial Loan Law and which was in effect immediately prior to the operative date of this act shall be deemed canceled as of the operative date of this act.

(2) Each subject industrial bank shall, promptly after the operative date of this act, surrender to the commissioner all certificates of authority which were issued to it under the Industrial Loan Law and which were in effect immediately prior to the operative date of this act.

SEC. 58. (a) The articles of incorporation of each subject industrial bank shall, as of the operative date of this act, be deemed to provide that the purpose of the subject industrial bank is to engage in industrial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank.

(b) (1) Within 90 days of the operative date of this act, each subject industrial bank shall amend its articles of incorporation to comply with the provisions of subdivision (c) of Section 600 of the Revised Banking Law.

(2) Notwithstanding Section 902 of the Corporations Code, the amendment of the articles of a subject industrial bank called for in paragraph (1) may be adopted by approval of the board alone.

SEC. 59. Each order which was issued to or with respect to a subject industrial bank under the Industrial Loan Law before the operative date of this act and which was in effect immediately before the operative date of this act shall continue in effect on and after the operative date of this act.

SEC. 60. (a) Sections 642 and 643 of the Financial Code relating to distributions shall apply to industrial banks on January 1, 2001, unless an industrial bank makes the election provided for in subdivision (b).

(b) Within 30 days of January 1, 2001, an industrial bank shall file with the commissioner a notice of election to delay the applicability of Sections 642 and 643 of the Financial Code to that industrial bank until January 1, 2005.

(c) Within 15 days of receipt of the notice of election, the commissioner shall acknowledge in writing that the notice of election has been received and filed. The acknowledgment of the filing by the commissioner shall act to delay the applicability of Sections 642 and 643 of the Financial Code as to that industrial bank until January 1, 2005.

(d) Until January 1, 2005, Chapter 5 (commencing with Section 500) of Division 1 of the Corporations Code applies to any distribution to shareholders made by an industrial bank that has been issued an acknowledgment in accordance with subdivision (c).

(e) Sections 642 and 643 of the Financial Code relating to distributions shall apply to all industrial banks on and after January 1, 2005.

SEC. 61. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for a more appropriate regulatory structure and comprehensive regulatory oversight at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1016

An act to amend Sections 13900, 13901, 13961.1, and 13968.5 of, to amend and repeal Section 13965 of, to add Section 13965.1 to, and to add and repeal Chapter 6 (commencing with Section 13974.5) of Part 4 of Division 3 of Title 2 of, the Government Code, to amend Sections 1202.4, 1203.1k, and 1203.3 of the Penal Code, and to amend Section 730.6 of the Welfare and Institutions Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor September 29, 2000. Filed with
Secretary of State September 30, 2000.]

I am reducing the appropriation from the Restitution Fund in Section 13 of Assembly Bill No. 2491 from $2.45 million to $1 million to the California Victim Compensation and Government Claims Board, formerly known as the Board of Control, to enter into an interagency agreement with the University of California, San Francisco, to establish a victims recovery center at San Francisco General Hospital. This will allow for an evaluation of the victims recovery center prior to the provision of additional resources to fully fund this four year pilot project.

I am very supportive of the expansion of benefits to victims of crime pursuant to the remaining provisions of this bill. This bill will provide approximately $9 million of payments to victims on an annual basis.

GRAY DAVIS, Governor

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

SECTION 1. Section 13900 of the Government Code is amended to read:

13900. (a) As used in this chapter, ''board'' means the California Victim Compensation and Government Claims Board.

(b) Any reference in statute or regulation to the State Board of Control shall be construed to refer to the California Victim Compensation and Government Claims Board.

SEC. 2. Section 13901 of the Government Code is amended to read:

13901. (a) There is in state government the California Victim Compensation and Government Claims Board.

(b) The board consists of the Director of General Services and the Controller, both acting ex officio, and a third member who shall be appointed by and serve at the pleasure of the Governor. The third member may be a state officer who shall act ex officio.

(c) Any reference in statute or regulation to the State Board of Control shall be construed to refer to the California Victim Compensation and Government Claims Board.

SEC. 3. Section 13961.1 of the Government Code is amended to read:

13961.1. (a) An emergency award shall be available for a victim or derivative victim if any of the following occur as a result of the crime:

(1) The victim incurs loss of income or the derivative victim incurs loss of support.

(2) The victim requires emergency medical treatment.

(3) The victim dies as a result of the crime and any individual, without anticipation of personal gain, incurs the funeral and burial expense.

(4) The victim is an adult victim of domestic violence in need of those relocation expenses authorized by paragraph (4) of subdivision (a) of Section 13965.

(b) Emergency award application forms shall be provided by the board upon request of the applicant. The board shall make available the application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim or derivative victim. Disbursements of funds for emergency awards shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons and local agencies, including, but not limited to, district attorneys, probation departments, and local victim witness centers, who will use guidelines established by the board, to grant and disburse emergency awards. By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board or the applicant's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) An applicant for an emergency award is not entitled to a hearing before the board to contest a denial of an emergency award. However, the applicant may submit an application for a regular award and is entitled to a hearing pursuant to Section 13963 if that application is recommended for denial.

(e) The application for an emergency award shall notify the applicant that he or she must complete the regular application within one year of the date of the crime.

(f) If upon final disposition of the regular application, it is found that the applicant is not eligible for assistance from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon a final disposition of the application, the board grants assistance to the applicant, the amount of the emergency award shall be deducted from the final award of compensation granted. If the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's or derivative victim's application for assistance, before any appellate action is instituted. If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

(g) The amount of the emergency award shall be dependent upon the immediate needs of the victim or derivative victim, as evidenced by the victim's loss of income or the derivative victim's loss of support, the funeral and burial expenses incurred on behalf of the victim, and other losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an

application. Except for applications filed pursuant to paragraph (3) of subdivision (a), in no event shall the amount of the emergency award exceed two thousand dollars ($2,000). Where an application has been filed pursuant to paragraph (3) of subdivision (a), the amount of the emergency award shall not exceed five thousand dollars ($5,000).

(h) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim or derivative victim on whose behalf the application is made.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of the agency.

(4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.

(5) The nature of the injury and the name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) The name, address, and telephone number of the funeral and burial providers and the cost of funeral and burial expenses incurred to date.

(7) A statement that in the event the applicant is later found ineligible for assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(8) The applicant's signature and a statement that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

(i) Where an application has been filed pursuant to paragraph (3) of subdivision (a), the application for the emergency award shall additionally contain the following:

(1) A statement that in the event the applicant receives reimbursement from another source, including, but not limited to, court-ordered restitution or life insurance, either in whole or in part for the funeral and burial expenses incurred on behalf of the victim, that the applicant will be required to repay the board.

(2) A complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to the claim, as prepared by a law enforcement agency pursuant to subdivision (d) of Section 13968. This report may, at the discretion of the law enforcement agency and as provided in subdivision (e) of Section 13968, exclude the names of witnesses or informants, if

the release of this information would be detrimental to the parties or to an investigation currently in progress.

SEC. 4. Section 13965 of the Government Code, as added by Section 5.7 of Chapter 697 of the Statutes of 1998, is repealed.

SEC. 5. Section 13965 of the Government Code, as amended by Section 1.5 of Chapter 584 of the Statutes of 1999, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim, as defined in subparagraph (A), (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 13960, who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000), provided that mental health counseling of a derivative victim under subparagraph (E) of paragraph (2) of subdivision (a) of Section 13960 shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(E) A victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code in an amount not to exceed three thousand dollars ($3,000) for mental health counseling expenses only. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any

psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to an adult victim of domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last month's rent or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method for direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of domestic violence, the victim shall agree to not inform the offender of the location of the victim's new residence and to not allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize a reimbursement for the expense of renovating or retrofitting his or her residence or vehicle, or both, to make the residence accessible or the vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary. Payment for these purposes shall not exceed five thousand dollars ($5,000), except that the board may award a greater amount when justified by the disability of the victim.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to

amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The total award to or on behalf of a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not exceed three thousand dollars ($3,000) for mental health counseling expenses only.

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

SEC. 6. Section 13965 of the Government Code, as amended by Section 2 of Chapter 584 of the Statutes of 1999, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments

to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to an adult victim of domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last month's rent or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of

receipts, lease agreements, or other documents as requested, or developing a method of direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of domestic violence, the victim shall agree to not inform the offender of the location of the victim's new residence and to not allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize reimbursement for the expense of renovating or retrofitting his or her residence or vehicle, or both, to make the residence accessible or the

vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary. Payment for these purposes shall not exceed five thousand dollars ($5,000), except that the board may award a greater amount when justified by the disability of the victim.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or

derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates

shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

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

SEC. 7. Section 13965.1 is added to the Government Code, to read:

13965.1. (a) Pursuant to paragraphs (2) and (3) of subdivision (a) of Section 13965, the board may take any of the following actions:

(1) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages directly resulting from the injury, subject to the following:

(A) Loss of wages shall not be paid by the board for more than five years following the crime, unless the victim is disabled as defined in Section 416(i) of Title 42 of the United States Code as a direct result of the injury.

(B) If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(2) Authorize a cash payment to an adult derivative victim for loss of wages, subject to the following:

(A) The derivative victim is the parent or legal guardian of a victim, who at the time of the crime was under the age of 18 years and is hospitalized as a direct result of the crime.

(B) The minor victim's treating physician certifies in writing that the presence of the victim's parent or legal guardian at the hospital is necessary for the treatment of the victim.

(C) Reimbursement for loss of wages under this paragraph shall not exceed the total value of the wages that would have been earned by the adult derivative victim during a 30-day period.

(3) Authorize a cash payment to an adult derivative victim for loss of wages, subject to the following:

(A) The derivative victim is the parent or legal guardian of a victim who at the time of the crime was under the age of 18 years.

(B) The victim dies as a direct result of the crime.

(C) The board shall pay for loss of wages under this subdivision for not more than 30 days from the date of the victim's death.

(4) Authorize a cash payment to a derivative victim who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime, subject to the following:

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than five years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(b) The total amount payable to all derivative victims whose claims fall under this section as the result of one crime shall not exceed seventy thousand dollars ($70,000).

(c) Any change in the law resulting from the addition or amendment of this section shall be applied prospectively to claims based on the date of the crime on which the claim for loss of wages or loss of support is based.

SEC. 8. Section 13968.5 of the Government Code is amended to read:

13968.5. (a) The board shall conduct a pilot program that entitles a victim or derivative victim to be reimbursed from the Restitution Fund for grief, mourning, and bereavement services in cases of death or severe trauma, except that the services shall not include mental health services for which a state license is required. These services shall be rendered by a person certified as a child life specialist by the National Child Life Council, who has at least five years of professional experience in the field of child life, as defined by the council. These services shall be performed under the supervision of a court, hospital, physician and surgeon, licensed psychotherapist included in Section 1010 of the Evidence Code, community-based organization, or county. The board may only include in the program a certified child life specialist who has been determined by a current employer in California or a California licensing entity not to have a criminal history that would prevent that employment or the issuance of a license. If neither determination has occurred, the board shall secure from the Department of Justice a criminal record to determine whether the applicant would be disqualified from employment pursuant to Sections 45122.1 and 45123 of the Education Code, and for these purposes the board may make the determinations required by that section. The board may charge a certified child life specialist a fee for the actual cost of fingerprinting and obtaining the criminal history information required by this section. The program shall terminate on January 1, 2004. The board shall evaluate the program and, notwithstanding Section 7550.5, shall report its conclusions and recommendations to the Legislature by January 31, 2003. The board may consider whether child life specialists should be licensed by a state agency in making its recommendations to the Legislature.

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

SEC. 8.5. Chapter 6 (commencing with Section 13974.5) is added to Part 4 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 6. VICTIMS OF CRIME RECOVERY CENTER

13974.5. (a) The California Victim Compensation and Government Claims Board shall enter into an interagency agreement with the University of California, San Francisco, to establish a victims of crime recovery center at the San Francisco General Hospital to demonstrate the effectiveness of providing comprehensive and integrated services to victims of crime, subject to conditions set forth by the board.

(b) This section shall not apply to the University of California unless the Regents of the University of California, by appropriate resolution, make this section applicable.

(c) The board shall report to the Legislature regarding the effectiveness of the victims of crime recovery center no later than May 1, 2004.

(d) This section shall only be implemented to the extent that funding is appropriated for that purpose.

13974.7. This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 9. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification

of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(4) Except as provided in paragraph (5), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. This disclosure shall be available to the victim pursuant to Section 1214, and any use the court may make of the disclosure shall be subject to the restrictions of subdivision (g). The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(5) A defendant who fails to file the financial disclosure required in paragraph (4), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (4), and paragraphs (6), (7), (8), and (9) shall not apply.

(6) Except as provided in paragraph (5), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(7) In its discretion, the court may relieve the defendant of the duty under paragraph (6) of filing with the clerk by requiring that the

defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(8) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (4) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(9) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (4) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (4) as a condition of probation or suspended sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the

Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, ''victim'' shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) ''Derivative victims'' as defined in Section 13960 of the Government Code.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) (1) This section shall become operative on January 1, 2000, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1214 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 9.5. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those

reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received

assistance from the Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the State Board of Control reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the State Board of Control and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the State Board of Control, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the State Board of Control to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. This disclosure shall be available to the victim pursuant to Section 1214, and any use the court may make of the disclosure shall be subject to the restrictions of subdivision (g). The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a

misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, ''victim'' shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) ''Derivative victims'' as defined in Section 13960 of the Government Code.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed

pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) (1) This section shall become operative on January 1, 2000, except when all of the following apply:

(A) A majority of judges of a court apply to the Judicial Council for an extension.

(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).

(C) The Judicial Council grants the extension upon finding good cause.

(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1214 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case.

SEC. 10. Section 1203.1k of the Penal Code is amended to read:

1203.1k. For any order of restitution made under Section 1203.1, the court may order the specific amount of restitution and the manner in which restitution shall be made to a victim or the Restitution Fund, to the extent that the victim has received payment from the Victims of Crime Program, based on the probation officer's report or it may, with the consent of the defendant, order the probation officer to set the amount of restitution and the manner in which restitution shall be made to a victim or the Restitution Fund, to the extent that the victim has received payment from the Victims of Crime Program. The defendant shall have the right to a hearing before the judge to dispute the determinations made by the probation officer in regard to the amount or manner in which restitution is to be made to the victim or the Restitution Fund, to the extent that the victim has received payment from the Victims of Crime Program. If the court orders restitution to be made to the Restitution

Fund, the court, and not the probation officer, shall determine the amount and the manner in which restitution is to be made to the Restitution Fund.

SEC. 11. Section 1203.3 of the Penal Code is amended to read:

1203.3. (a) The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held.

(b) The exercise of the court's authority in subdivision (a) to revoke, modify, change, or terminate probation is subject to the following:

(1) Before any sentence or term or condition of probation is modified, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two-day written notice and an opportunity to be heard on the matter.

(A) If the sentence or term or condition of probation is modified pursuant to this section, the judge shall state the reasons for that modification on the record.

(B) As used in this section, modification of sentence shall include reducing a felony to a misdemeanor.

(2) No order shall be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke, modify, or change its order.

(3) In all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be by the court discharged subject to the provisions of these sections.

(4) The court may modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations or the good conduct and reform of the defendant while on probation. The court shall not modify the dollar amount of the restitution obligations due to the good conduct and reform of the defendant, absent compelling and extraordinary reasons, nor shall the court limit the ability of payees to enforce the obligations in the manner of judgments in civil actions.

(5) Nothing in this section shall be construed to prohibit the court from modifying the dollar amount of a restitution order pursuant to subdivision (f) of Section 1202.4 at any time during the term of the probation.

(c) If a probationer is ordered to serve time in jail, and the probationer escapes while serving that time, the probation is revoked as a matter of law on the day of the escape.

(d) If probation is revoked pursuant to subdivision (c), upon taking the probationer into custody, the probationer shall be accorded a hearing

or hearings consistent with the holding in the case of People v. Vickers (1972) 8 Cal.3d 451. The purpose of that hearing or hearings is not to revoke probation, as the revocation has occurred as a matter of law in accordance with subdivision (c), but rather to afford the defendant an opportunity to require the prosecution to establish that the alleged violation did in fact occur and to justify the revocation.

(e) This section does not apply to cases covered by Section 1203.2.

SEC. 12. Section 730.6 of the Welfare and Institutions Code is amended to read:

730.6. (a) (1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (h).

(b) In every case where a minor is found to be a person described in Section 602, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense as follows:

(1) If the minor is found to be a person described in Section 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars ($100) and not more than one thousand dollars ($1,000). A separate hearing for the fine shall not be required.

(2) If the minor is found to be a person described in Section 602 by reason of the commission of one or more misdemeanor offenses, the restitution fine shall not exceed one hundred dollars ($100). A separate hearing for the fine shall not be required.

(c) The restitution fine shall be in addition to any other disposition or fine imposed and shall be imposed regardless of the minor's inability to pay. This fine shall be deposited in the Restitution Fund, the proceeds of which shall be distributed pursuant to Section 13967 of the Government Code.

(d) (1) In setting the amount of the fine pursuant to subparagraph (A) of paragraph (2) of subdivision (a), the court shall consider any relevant factors including, but not limited to, the minor's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the

offense. The losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses such as psychological harm caused by the offense.

(2) The consideration of a minor's ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay.

(e) Express findings of the court as to the factors bearing on the amount of the fine shall not be required.

(f) Except as provided in subdivision (g), under no circumstances shall the court fail to impose the separate and additional restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). This fine shall not be subject to penalty assessments pursuant to Section 1464 of the Penal Code.

(g) In a case in which the minor is a person described in Section 602 by reason of having committed a felony offense, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(h) Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court at any time during the term of the commitment or probation. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. A minor's inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order. A restitution order pursuant to subparagraph (B) of paragraph (2) of subdivision (a), to the extent possible, shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages.

Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

A minor shall have the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount on its own motion or on the motion of the district attorney, the victim or victims, or the minor. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the hearing on the motion.

(i) A restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment pursuant to subdivision (r). The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor or the minor's parent or guardian arising out of the offense for which the minor was found to be a person described in Section 602. Restitution imposed shall be ordered to be made to the Restitution Fund to the extent that the victim, as defined in subdivision (j), has received assistance from the Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(j) For purposes of this section, "victim'' shall include the immediate surviving family of the actual victim.

(k) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.

(*l*) Upon a minor being found to be a person described in Section 602, the court shall require as a condition of probation the payment of restitution fines and orders imposed under this section. Any portion of

a restitution order that remains unsatisfied after a minor is no longer on probation shall continue to be enforceable by a victim pursuant to subdivision (r) until the obligation is satisfied in full.

(m) Probation shall not be revoked for failure of a person to make restitution pursuant to this section as a condition of probation unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay.

(n) If the court finds and states on the record compelling and extraordinary reasons why restitution should not be required as provided in paragraph (2) of subdivision (a), the court shall order, as a condition of probation, that the minor perform specified community service.

(o) The court may avoid ordering community service as a condition of probation only if it finds and states on the record compelling and extraordinary reasons not to order community service in addition to the finding that restitution pursuant to paragraph (2) of subdivision (a) should not be required.

(p) When a minor is committed to the Department of the Youth Authority, the court shall order restitution to be paid to the victim or victims, if any. Payment of restitution to the victim or victims pursuant to this subdivision shall take priority in time over payment of any other restitution fine imposed pursuant to this section.

(q) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(r) If the judgment is for a restitution fine ordered pursuant to subparagraph (A) of paragraph (2) of subdivision (a), or a restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a), the judgment may be enforced in the manner provided in Section 1214 of the Penal Code.

SEC. 12.5. Section 730.6 of the Welfare and Institutions Code is amended to read:

730.6. (a) (1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (h).

(b) In every case where a minor is found to be a person described in Section 602, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense as follows:

(1) If the minor is found to be a person described in Section 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars ($100) and not more than one thousand dollars ($1,000). A separate hearing for the fine shall not be required.

(2) If the minor is found to be a person described in Section 602 by reason of the commission of one or more misdemeanor offenses, the restitution fine shall not exceed one hundred dollars ($100). A separate hearing for the fine shall not be required.

(c) The restitution fine shall be in addition to any other disposition or fine imposed and shall be imposed regardless of the minor's inability to pay. This fine shall be deposited in the Restitution Fund, the proceeds of which shall be distributed pursuant to Section 13967 of the Government Code.

(d) (1) In setting the amount of the fine pursuant to subparagraph (A) of paragraph (2) of subdivision (a), the court shall consider any relevant factors including, but not limited to, the minor's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the offense. The losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses such as psychological harm caused by the offense.

(2) The consideration of a minor's ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay.

(e) Express findings of the court as to the factors bearing on the amount of the fine shall not be required.

(f) Except as provided in subdivision (g), under no circumstances shall the court fail to impose the separate and additional restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). This fine shall not be subject to penalty assessments pursuant to Section 1464 of the Penal Code.

(g) In a case in which the minor is a person described in Section 602 by reason of having committed a felony offense, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the restitution fine required by subparagraph (A) of

paragraph (2) of subdivision (a). When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(h) Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court at any time during the term of the commitment or probation. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. A minor's inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order. A restitution order pursuant to subparagraph (B) of paragraph (2) of subdivision (a), to the extent possible, shall identify each victim, unless the court for good cause finds that the order should not identify a victim or victims, and the amount of each victim's loss to which it pertains, and shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

A minor shall have the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the

amount on its own motion or on the motion of the district attorney, the victim or victims, or the minor. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the hearing on the motion. When the amount of victim restitution is not known at the time of disposition, the court order shall identify the victim or victims, unless the court finds for good cause that the order should not identify a victim or victims, and state that the amount of restitution for each victim is to be determined. When feasible, the court shall also identify on the court order, any cooffenders who are jointly and severally liable for victim restitution.

(i) A restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment pursuant to subdivision (r). The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor or the minor's parent or guardian arising out of the offense for which the minor was found to be a person described in Section 602. Restitution imposed shall be ordered to be made to the Restitution Fund to the extent that the victim, as defined in subdivision (j), has received assistance Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(j) For purposes of this section, ''victim'' shall include the immediate surviving family of the actual victim.

(k) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.

(*l*) Upon a minor being found to be a person described in Section 602, the court shall require as a condition of probation the payment of restitution fines and orders imposed under this section. Any portion of a restitution order that remains unsatisfied after a minor is no longer on probation shall continue to be enforceable by a victim pursuant to subdivision (r) until the obligation is satisfied in full.

(m) Probation shall not be revoked for failure of a person to make restitution pursuant to this section as a condition of probation unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay.

(n) If the court finds and states on the record compelling and extraordinary reasons why restitution should not be required as provided

in paragraph (2) of subdivision (a), the court shall order, as a condition of probation, that the minor perform specified community service.

(o) The court may avoid ordering community service as a condition of probation only if it finds and states on the record compelling and extraordinary reasons not to order community service in addition to the finding that restitution pursuant to paragraph (2) of subdivision (a) should not be required.

(p) When a minor is committed to the Department of the Youth Authority, the court shall order restitution to be paid to the victim or victims, if any. Payment of restitution to the victim or victims pursuant to this subdivision shall take priority in time over payment of any other restitution fine imposed pursuant to this section.

(q) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(r) If the judgment is for a restitution fine ordered pursuant to subparagraph (A) of paragraph (2) of subdivision (a), or a restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a), the judgment may be enforced in the manner provided in Section 1214 of the Penal Code.

SEC. 13. The sum of two million four hundred fifty thousand dollars ($2,450,000) is hereby appropriated from the Restitution Fund to the California Victim Compensation and Government Claims Board for implementation of the interagency agreement specified in Section 13974.5 of the Government Code, as added by Section 8.5 of this act, for the purpose of establishing a victims of crime recovery center at the San Francisco General Hospital.

SEC. 14. Section 9.5 of this bill incorporates amendments to Section 1202.4 of the Penal Code proposed by both this bill and SB 1802. 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 1202.4 of the Penal Code, and (3) this bill is enacted after SB 1802, in which case Section 9 of this bill shall not become operative.

SEC. 15. Section 12.5 of this bill incorporates amendments to Section 730.6 of the Welfare and Institutions Code proposed by both this bill and SB 1943. 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 730.6 of the Welfare and Institutions Code, and (3) this

bill is enacted after SB 1943, in which case Section 12 of this bill shall not become operative.

CHAPTER 1017

An act to add Chapter 4.7 (commencing with Section 39760) to Part 2 of Division 26 of the Health and Safety Code, relating to agricultural biomass, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

This bill would create a $10 million account administered by the Department of Food and Agriculture to provide incentives for businesses that use rice straw for agricultural biomass projects. I have reduced the appropriation from $10 million to $2 million.

This measure will help California utilize agricultural biomass as a means of avoiding landfill use, preventing air pollution, and enhancing environmental quality. It will help to create hundreds of direct and indirect jobs in Northern California communities with historically high levels of unemployment. AB 2514 will foster alternative uses for rice straw and create new markets for recycled rice straw products.

GRAY DAVIS, Governor

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

SECTION 1. Chapter 4.7 (commencing with Section 39760) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 4.7. AGRICULTURAL BIOMASS UTILIZATION ACCOUNT

39760. The Legislature hereby finds and declares that the rice industry has led many other commodity groups in developing alternatives to open-field burning. In order to aid in the continuation of this role of leadership within the agricultural industry and to enable the transition to a free-market utilization of biomass, funds are needed to provide grants to persons that utilize agricultural biomass and rice straw.

39761. For the purposes of this chapter, the following terms mean:

(a) ''Department'' means the Department of Food and Agriculture.

(b) ''Secretary'' means the Secretary of Food and Agriculture.

39762. (a) (1) The Agricultural Biomass Utilization Account is hereby created in the Department of Food and Agriculture Fund.

(2) The sum of 10 million dollars ($10,000,000) is hereby appropriated from the General Fund to the Agricultural Biomass Utilization Account for expenditure for the purposes identified in subdivision (b).

(b) The account shall be administered by the department, in consultation with the State Air Resources Board and the California Integrated Waste Management Board, for the purpose of providing grants to persons that utilize agricultural biomass as a means of avoiding landfill use, preventing air pollution, and enhancing environmental quality.

(c) Moneys in the account shall include moneys transferred from the General Fund pursuant to subdivision (a) and any moneys solicited by the secretary from other sources.

(d) The secretary shall actively solicit funds from other federal, state, and private sources with the goal of initially supplementing and eventually supplanting the appropriation from the General Fund made pursuant to subdivision (a).

(e) The department may implement similar grant programs for other commodity groups that are used for the purposes set forth in paragraphs (1) to (6), inclusive, of subdivision (e) of Section 39763.

(f) The department shall not utilize more than 7 percent of the funds described in subdivision (a) for the administration of the account.

39763. (a) The funds appropriated by paragraph (2) of subdivision (a) of Section 39762, less administrative costs, shall be dedicated for grants to persons that utilize rice straw.

(b) Grants shall be provided pursuant to this chapter in a manner to be determined by the department, and shall include, but shall not be limited to, grants on a per-ton basis and a per-project basis.

(c) On or before July 1 of each year, the secretary shall set the per-ton grant level in an amount of not less than twenty dollars ($20) per ton of rice straw so utilized.

(d) Grants shall not be provided pursuant to this section for the purchase of any rice straw for which a tax credit has been claimed pursuant to Section 17052.10 of the Revenue and Taxation Code.

(e) A per-ton grant may be provided pursuant to this chapter only if the applicant is the ''end-user'' of agricultural biomass. For purposes of this subdivision, ''end user'' means a person who uses agricultural biomass for any of the following purposes:

(1) Processing.

(2) Generating energy.

(3) Manufacturing.

(4) Exporting.

(5) Preventing erosion.

(6) Any other environmentally sound purpose, excluding open-field burning, as determined to be appropriate by the department.

(f) Criteria to be considered by the department in determining whether to award a grant pursuant to this chapter shall include, but shall not be limited to, the following:

(1) Quantity of biomass to be utilized.

(2) Whether the proposed use offers other environmental or public policy benefits, including but not limited to, landfill avoidance, pollution prevention, electrical generation, and sustainability.

(3) The degree to which the proposed grant would assist in moving the commodity group toward an eventual free market utilization of biomass without the assistance of government.

(g) The secretary shall select grant recipients in consultation with the State Air Resources Board, the Integrated Waste Management Board, and the advisory committee created pursuant to subdivision (*l*) of Section 41865 from a list of potential grantees recommended by the Department of Food and Agriculture.

CHAPTER 1018

An act to add Chapter 6 (commencing with Section 42800) to Part 4 of Division 26 of the Health and Safety Code, and to add Chapter 8.5 (commencing with Section 25730) to Division 15 of the Public Resources Code, relating to air pollution.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 6 (commencing with Section 42800) is added to Part 4 of Division 26 of the Health and Safety Code, to read:

CHAPTER 6. CALIFORNIA CLIMATE ACTION REGISTRY

Article 1. Findings and Declarations

42800. This chapter shall be known, and may be cited, as the California Climate Action Registry.

42801. The Legislature finds and declares all of the following:

(a) It is in the best interest of the State of California, the United States of America, and the earth as a whole, to encourage voluntary actions to achieve all economically beneficial reductions of greenhouse gas emissions from California sources.

(b) Mandatory greenhouse gas emissions reductions may be imposed on California sources at some future point, and in view of this, the state has a responsibility to use its best efforts to ensure that organizations that voluntarily reduce their emissions receive appropriate consideration for

emissions reductions made prior to the implementation of any mandatory programs.

(c) Past initiatives in the state that took early and responsible action to reduce air pollution and ozone smog have demonstrated political, economic, and technological leadership, and have proven to benefit the state.

(d) The state's tradition of environmental leadership should be recognized through the establishment of a registry to provide documentation of those greenhouse gas emissions reductions that are voluntarily achieved by sources in the state.

(e) The state hereby commits to use its best efforts to ensure that organizations that establish greenhouse gas emissions baselines and register emissions results that are verified in accordance with this chapter receive appropriate consideration under any future international, federal, or state regulatory scheme relating to greenhouse gas emissions. The state cannot guarantee that any regulatory regime relating to greenhouse gas emissions will recognize the baselines or reductions recorded in the registry.

Article 2. Purposes

42810. The purposes of the California Climate Action Registry shall be to do all of the following:

(a) Help various entities in the state to establish emissions baselines against which any future federal greenhouse gas emission reduction requirements may be applied.

(b) Encourage voluntary actions to increase energy efficiency and reduce greenhouse gas emissions.

(c) Enable participating entities to record voluntary greenhouse gas emissions reductions made after 1990 in a consistent format that is supported by third-party verification.

(d) Ensure that sources in the state receive appropriate consideration for verified emissions reductions under any future federal regulatory regime relating to greenhouse gas emissions.

(e) Recognize, publicize, and promote registrants making voluntary reductions.

(f) Recruit broad participation in the process from all economic sectors and regions of the state.

Article 3. Climate Action Registry

42820. The Secretary of the Resources Agency shall establish a nonprofit public benefit corporation, to be known as the California Climate Action Registry.

42821. (a) The registry shall be governed by a seven-member board of directors, to be composed of all of the following members:

(1) The Secretary of the Resources Agency, or his or her designee.

(2) The Secretary for Environmental Protection, or his or her designee.

(3) Five public members representing business, local government, and public interest environmental organizations, to be appointed by the Governor for two-year terms, staggered so that, initially, three public members serve one-year terms and two members serve two-year terms.

(b) The board of directors of the registry is responsible for ensuring that the registry fulfills the purposes established by this chapter and meets the financial, reporting, and operating requirements of its articles of incorporation. The board of directors shall appoint and supervise an executive director, who shall hire and direct staff.

42822. (a) The procedures for monitoring, reporting, and verifying greenhouse gas emissions established by this chapter shall be the only protocols recognized by the state for the purpose of defining and reporting greenhouse gas emissions.

(b) The registry shall adopt a schedule of fees and, after an initial startup period, charge participants for registry services to cover the costs of its operations.

42823. The registry shall perform all of the following functions:

(a) Provide referrals to approved providers for advice on all of the following:

(1) Designing programs to establish emissions baselines and to monitor and track greenhouse gas emissions.

(2) Establishing emissions reduction goals based on international best practices for specific industries and economic sectors.

(3) Designing and implementing organization-specific plans that improve energy efficiency or utilize renewable energy, or both, and that are capable of achieving emission reduction targets.

(b) In coordination with the State Energy Resources Conservation and Development Commission, the registry shall adopt and periodically update a list of organizations recognized by the state as qualified to provide the detailed technical advice in subdivision (a) and assist participants in identifying and selecting providers that have expertise applicable to each participant's circumstances.

(c) Adopt standards for verifying emissions and reductions.

(d) Qualify independent firms that have demonstrated the capability of verifying and auditing emissions and reduction quantities and performance, and that are capable of providing opinions regarding the accuracy of reported results.

(e) Refer participants to qualified independent auditing firms.

(f) Adopt a uniform format for reporting emissions baselines and reductions to facilitate their recognition in any future regulatory regime.

(g) Maintain a record of all emissions baselines and reductions verified by qualified independent auditors. The public shall have access to this record, except for any portions of a participant's emissions results that a participant may deem confidential.

(h) Encourage organizations from various sectors of the state's economy, and those from various geographic regions of the state, to monitor emissions, establish baselines and reduction targets, and implement efficiency improvement and renewable energy programs to achieve those targets.

(i) Recognize, publicize, and promote participants that do any of the following:

(1) Commit to monitor their emissions and set reduction targets.

(2) Establish emissions baselines.

(3) Report the quantity of their annual emissions progress.

42824. Participation in the registry is voluntary. Any entity conducting business in the state may register its emissions results, including emissions generated outside of the state, on an entitywide basis with the registry, and may utilize the services of the registry.

Article 4. Procedures for Reporting, Monitoring, and Verifying Emissions

42840. (a) Participants shall utilize the following reporting procedures:

(1) To establish an emissions baseline, participants shall report their actual emissions for the most recent year for which they have complete energy use and fuel consumption data as specified in this chapter. Participants that have complete energy use or fuel consumption data for earlier years that can be verified by independent auditors may establish their baseline as any year beginning after January 1, 1990. After establishing a baseline, participants shall report their verified emissions results in each subsequent year in order to record changes in emissions levels with respect to their baseline year. Participants may report annual emission results without establishing an emissions baseline.

(2) (A) Participants shall report emissions baselines and annual emissions results expressed by a fraction in terms of emissions efficiency rates, as follows:

(i) Private corporations and cooperatives other than electric generators shall report carbon dioxide emissions per dollar of revenue.

(ii) Electric generators shall report emissions of carbon dioxide per kilowatthour.

(iii) Nonprofit organizations and governmental agencies shall report carbon dioxide emissions per dollar of budgetary expenditure plus amortized capital expenditures.

(iv) Participants shall report both the numerator and the denominator of the fraction that determines their emission efficiency rate.

(B) The numerator utilized by each participant under subparagraph (A) shall include all actual emissions of greenhouse gases, expressed in terms of carbon dioxide equivalence. Participants shall report revenue and budgetary expenditures in year 2000 constant dollars.

(C) To complement or replace the general metrics described in subparagraph (A), the registry shall adopt industry-specific reporting metrics, linked to or based upon internationally accepted standards, as these become available, if both the State Energy Resources Conservation and Development Commission and the State Air Resources Board recommend their adoption, unless the board of directors of the registry determines that using industry-specific metrics would not further the purposes of this chapter.

(D) To help ensure that reported emissions do not diverge from actual emissions results, emissions reporting from corporations in industries deemed by the board of directors of the registry to be facing rapid changes in prices for their goods or services may be adjusted pursuant to a process to be recommended by the State Energy Resources Conservation and Development Commission.

(E) The registry may adopt guidelines encouraging participants to report emissions in relation to the annual average business-as-usual rate of improvement in the energy efficiency of the state economy, as determined periodically by the State Energy Resources Conservation and Development Commission.

(b) Participants shall report direct emissions and indirect emissions. Direct emissions include, but are not limited to, those emissions directly influenced by the participant's operations, including onsite combustion, fugitive noncombustion emissions, and vehicles owned and operated by the participant. Indirect emissions include, but are not limited to, those emissions embodied in electricity consumption and those resulting from offsite steam generation and district heating and cooling. After two years of operation, the registry shall consider phasing in guidelines for the measurement and reporting of indirect emissions associated with a participant's transportation-based activities, including, but not limited to, shipping of products and materials, employee commuting, and purchased air travel, pursuant to definitions and measurement procedures to be determined by the State Energy Resources Conservation and Development Commission not later than July 1, 2003.

(c) (1) All participants shall report direct and indirect emissions of carbon dioxide (CO_2).

(2) The registry shall also encourage participants to monitor and report emissions of the following gases:

(A) Hydrofluorocarbons (HFCs).

(B) Methane (CH_4).

(C) Oxides of nitrogen (N_2O).

(D) Perfluorocarbons (PFCs).

(E) Sulfur hexafluoride (SF_6).

(3) The report of information specified in paragraph (2) is optional for three years after a participant joins the registry. After participating in the registry for a total of three years, participants shall report emissions and reductions required by both paragraphs (1) and (2).

(4) Emissions and reductions of all gases under this subdivision shall be reported by multiplying actual measured emissions times their global warming potential for the 100-year timeframe, expressed as an equivalent of pounds of CO_2, as established by the Intergovernmental Panel on Climate Change.

(d) The basic unit of participation in the registry shall be an entity in its entirety. For the purposes of this chapter, ''entity'' means any corporation filing a separate tax return, any city or county, and each state government agency. The registry shall not record emissions baselines and reductions for individual facilities or projects, except to the extent they are included in an entity's emissions reporting.

(1) Corporations may report emissions baselines and annual emissions results from subsidiaries if the parent corporation submits, in writing to the registry, a commitment to report corporatewide emissions within three years of first registering its subsidiary's emissions results. Corporations that do not report corporatewide emissions within this three-year period shall have the emissions baselines and the results of its previously registered subsidiary removed from the registry list.

(2) Participants shall report emissions from all sources in the state when they initially register, and shall report emissions from all operations based in the United States, including any facility, division, or other entity in which the participant owns more than 50-percent interest within three years of joining the registry. In addition, the registry shall encourage corporations with operations outside of the United States to register their total worldwide emissions baselines and annual emissions results.

(3) To ensure that reported emissions reflect actual emissions reductions, participants that outsource production or services shall report emissions associated with the outsourced activity, and remove these emissions from their emissions baseline. The subcontracted entity, if it voluntarily chooses to participate in the registry shall report emissions associated with the outsourced activities it has taken over. Participants shall attest at least once each year that the entity has not

outsourced any emissions, or that if it has, that all emissions associated with the outsourced activity have been reported and subtracted from the entity's baseline emissions.

(4) To prevent changes in vertical integration within corporations from leading to apparent emissions reductions when in fact no reductions have occurred, the registry shall treat mergers, acquisitions, and divestitures as follows:

(A) The emissions baselines of any merged or acquired entity shall be added together, and the registry shall treat the resulting entity as if it had been one corporation from the beginning.

(B) In divestitures, the emissions baselines of the affected corporations shall be split, with the effect that the registry shall treat them as if they had been separate corporations from the beginning. If the divested corporation is purchased by another firm, the registry shall treat that purchase as a merger with the purchasing corporation. If the divested corporation remains a separate entity after the divestiture, its registry baseline shall reflect the emissions associated with the entity's operations before the divestiture. Corporations that divest operations may allocate verified emissions reductions achieved prior to the divestiture among the divesting and the divested entities, and the registry shall adjust their baselines accordingly.

(C) Any such adjustments for changes in vertical integration shall be verified in the annual emissions audits required for recordation of emissions results.

42841. (a) To support the measurement and reporting of emissions in a consistent format, the registry shall adopt standardized forms and emissions tracking software that all participants shall use to calculate and report emissions. The registry may choose to accept the forms presently required by other voluntary emissions reporting programs if it finds the forms adequate to meet the criteria of this chapter. Use of any other forms shall not alter any requirements imposed by this chapter.

(b) The procedures established for all of the following shall conform to the requirements of Article 6 (commencing with Section 42870):

(1) Establishing electricity and fuel usage and for calculating associated emissions.

(2) Mass-balance calculations of emissions from, or stack testing or continuous emissions monitoring of, greenhouse gases from onsite fuel combustion.

(3) Measuring and verifying noncombustion emissions of the gases listed in paragraphs (1) and (2) of subdivision (c) of Section 42840.

(4) Collecting and maintaining data and records of energy, fuel, and chemical consumption sufficient to allow contemporaneous and ex post verification of direct and indirect emissions.

42842. (a) Participants in the registry shall hire, at their own expense, a third-party organization qualified pursuant to subdivision (b) to independently verify and attest to the accuracy of the emissions results reported to the registry each year.

(b) The registry shall adopt an approved list of organizations recognized as competent to measure, test, and verify emissions results and able to provide an independent opinion as to the completeness and accuracy thereof. The process for evaluating and approving these organizations shall be developed in coordination with the State Energy Resources Conservation and Development Commission. The registry may reopen the qualification process periodically in order for new organizations to be added to the approved list.

(c) The registry shall refer participants to the organization on the approved list described in subdivision (b).

(d) Organizations approved pursuant to subdivision (b) shall review participants' energy usage records and emissions calculations and, where necessary to establish or confirm emissions rates or quantities, perform direct measurement, monitoring, and testing of emissions after noting adjustments or otherwise accounting for any changes in the corporate organization of the entity or use of outsourcing, and shall summarize its review in a report to the board of directors, or equivalent governing body, of the participating entity, attesting to the accuracy of the reported emissions results and noting any exceptions, omissions, limitations, or other qualifications to their representation of accuracy.

(e) The State Energy Resources Conservation and Development Commission shall perform an occasional review and evaluation of participants' emissions monitoring and documentation, by accompanying third-party auditors on field visits to participants' sites on a randomly chosen basis, and shall report any findings in writing to the registry. The registry shall include these findings in the annual report to the Governor and the Legislature required by Article 5 (commencing with Section 42860).

42843. Not later than July 1, 2003, and periodically thereafter, the registry shall evaluate and review the emission reporting metrics described in subdivision (b) of Section 42870, in light of knowledge gained from the actual practice of measuring, monitoring, documenting, and verifying emissions, and, in consultation with the State Energy Resources Conservation and Development Commission, may modify or revise those reporting metrics as appropriate to further the purposes of this chapter.

Article 5. Annual Report

42860. Not later than July 1, 2003, and biennially thereafter, the registry shall report to the Governor and the Legislature on the number of organizations participating in the registry, the percentage of the state's emissions represented by the participants in the registry, and the reductions in greenhouse gas emissions achieved by those participants.

Article 6. Responsibilities of the State Energy Resources Conservation and Development Commission

42870. The State Energy Resources Conservation and Development Commission shall do all of the following:

(a) Develop a process to identify and qualify third-party organizations approved to provide technical assistance and advice in any or all of the areas of monitoring greenhouse gas emissions, set industry-specific emissions reduction targets, and develop and implement efficiency improvement programs appropriate to various industries and economic sectors. The process shall do all of the following:

(1) Define the minimum technical and organizational capabilities and other qualifications approved firms are required to meet.

(2) Call for applications or otherwise encourage interested organizations to submit their qualifications for review.

(3) Evaluate applicant organizations according to this list of qualification standards.

(4) Recommend, not later than July 1, 2001, specific organizations to the registry as qualified to provide the technical assistance functions of this chapter.

(5) Update the list of approved technical assistance providers every third year by doing all of the following:

(A) Reviewing the capabilities of already approved providers.

(B) Reviewing applications of new providers.

(C) Recommending to the registry specific organizations to be added to the approved list, and specific organizations no longer qualified to provide the technical assistance duties of this chapter.

(b) Develop or update certain emissions reporting metrics by doing all of the following:

(1) Review, in coordination with the State Air Resources Board, industry-specific greenhouse gas reporting metrics linked to or based on internationally accepted standards, as these become available periodically and advise the registry of its opinion as to whether the adoption of such sectoral or industry-specific metrics to complement or

replace the general metrics established in Section 42840 would further the purposes of this chapter.

(2) On or before July 1, 2001, develop an emissions reporting metric for corporations in industries experiencing rapid changes in real prices, to ensure that reported emissions efficiency rates do not diverge from actual changes in emissions efficiency, and recommend this metric to the registry for adoption.

(3) On or before July 1, 2003, determine the annual average business-as-usual rate of improvement in the energy efficiency of the state economy over the last 10 years and recommend to the registry whether participants in the registry should explicitly report emissions in relation to this ongoing rate of efficiency improvement.

(4) By July 1, 2003, recommend to the registry for possible adoption a procedure for defining and measuring transportation-based emissions associated with registry participants' activities, including, but not limited to, shipping of products and materials, employee commuting, and purchased air travel.

(c) Develop, not later than July 1, 2001, definitive procedures to guide registry participants and third-party verifiers in all of the following processes:

(1) Establishing entities' electricity usage and calculating CO_2 emissions associated with such usage.

(2) Establishing entities' fuel usage and calculating CO_2 emissions associated with such usage.

(3) Determining, for emissions from onsite fuel combustion, the circumstances in which mass-balance calculations may be used to estimate emissions, the circumstances in which stack testing or continuous emissions monitoring of greenhouse gases shall be considered necessary, and the procedures for conducting stack testing or monitoring when they are considered necessary.

(4) Measuring and verifying the noncombustion emissions of the six greenhouse gases with which the registry is concerned.

(5) Collecting and maintaining data and records of energy, fuel, and chemical consumption sufficient to allow both contemporaneous and ex post verifications of direct and indirect emissions on an entity-wide basis.

(d) Develop, not later than January 1, 2002, a process for qualifying verification and auditing organizations recognized by the State of California as competent to measure, test, and verify the emissions results of the types of entities that may choose to participate in this registry, by doing all of the following:

(1) Developing a list of the minimum technical and organizational capabilities and other qualification standards such verification and auditing organizations shall meet. Those qualifications shall include the

ability to sign an opinion letter, for which they may be held financially at risk, and attesting that the emissions results they have corroborated or reviewed are complete and accurate as reported.

(2) Publicizing an applications process or otherwise encouraging interested organizations to submit their qualifications for review.

(3) Evaluating applicant organizations according to the list of qualifications described in paragraph (1).

(4) Recommending specific third-party organizations to the registry as qualified to verify participants' actual emissions results in accordance with this chapter.

(5) Every third year, updating the list of approved verification organizations by doing all of the following:

(A) Reviewing the capabilities of approved organizations.

(B) Reviewing applications of organizations seeking to become approved.

(C) Recommending to the registry specific organizations to be added to the approved list, and specific organizations no longer qualified to perform the duties of this chapter.

(e) Occasionally, and on a random basis, accompany third-party auditors on field visits to participants' sites, to observe and evaluate the adequacy of any stack testing or other direct monitoring procedures, perform their own review of the documentation underlying participants' basis for reporting emissions, and report in writing to the registry on these findings, all to further ensure that reported emissions results accurately reflect actual emissions; that registry participants collect and retain adequate data on their energy and fuel use; and that qualified independent verification and auditing firms monitor and verify actual emissions in accordance with this chapter.

SEC. 2. Chapter 8.5 (commencing with Section 25730) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.5. CLIMATE CHANGE INVENTORY AND INFORMATION

25730. The commission, in consultation with the State Air Resources Board, the Department of Forestry and Fire Protection, the Department of Transportation, the State Water Resources Control Board, the California Integrated Waste Management Board, and other state agencies with jurisdiction over matters affecting climate change, shall do all of the following:

(a) On or before January 1, 2002, update the inventory of greenhouse gas emissions from all sources located in the state, as identified in the commission's 1998 report entitled, ''Appendix A: Historical and Forecasted Greenhouse Gas Emissions Inventories for California.'' Information on natural sources of greenhouse gas emissions shall be

included to the extent that information is available. The inventory shall include information that compares emissions from similar inventories prepared for the United States and other states or countries, and shall include information on relevant current and previous energy and air quality policies, activities, and greenhouse gas emissions reductions and trends since 1990, to the extent that information is available.

(b) Acquire and develop data and information on global climate change, and provide state, regional, and local agencies, utilities, business, industry, and other energy and economic sectors with information on the costs, technical feasibility, and demonstrated effectiveness of methods for reducing or mitigating the production of greenhouse gases from in-state sources, including net reductions through the management of natural forest reservoirs. The commission, in consultation with the State Air Resources Board, shall provide a variety of forums for the exchange of that information among interested parties, and shall provide other state agencies with information on cost-effective and technologically feasible methods that can be used to reduce or mitigate the emissions of greenhouse gases.

(c) Update its inventory every five years using current scientific methods, and report on the updated inventory to the Governor and the Legislature.

(d) Conduct at least one public workshop prior to finalizing each updated inventory. The commission shall post its report and inventory on the commission's web page on the Internet.

(e) Convene an interagency task force consisting of state agencies with jurisdiction over matters affecting climate change to ensure policy coordination at the state level for those activities.

(f) Establish a climate change advisory committee, to the extent that the commission determines that it can do so within existing resources. This advisory committee shall make recommendations to the commission on the most equitable and efficient ways to implement international and national climate change requirements based on cost, technical feasibility, and relevant information on current energy and air quality policies and activities and on greenhouse gas emissions reductions and trends since 1990. The commission shall designate one of its commissioners as chair, and shall include on the advisory committee members who represent business, including major industrial and energy sectors, utilities, forestry, agriculture, local government, and environmental groups. The meetings of the advisory committee shall be open to the public, and shall provide an opportunity for the public to be heard on matters considered by the advisory committee.

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CHAPTER 1019

An act to amend Sections 39751 and 39752 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 39751 of the Health and Safety Code is amended to read:

39751. The Rice Straw Demonstration Project Grant Fund is hereby created in the State Treasury. The fund shall be administered by the state board for the purpose of developing demonstration projects for new rice straw technologies in the rice straw growing regions of California.

SEC. 2. Section 39752 of the Health and Safety Code is amended to read:

39752. The state board shall provide cost-sharing grants for the development of demonstration projects for new rice straw technologies according to criteria developed by the state board, in consultation with the University of California, the Trade and Commerce Agency, and the Department of Food and Agriculture, and adopted at a noticed public hearing held by the state board. The criteria shall include, but shall not be limited to, all of the following:

(a) Proposed projects shall use a technology that could use significant volumes of rice straw annually if it is commercialized, based upon various factors, including potential markets and viability of the technology in meeting market demands.

(b) The state board shall provide a grant of not more than 50 percent of the cost for each demonstration project.

(c) Public and private support shall be demonstrated for proposed projects, including local community support from the rice growing community where the project would be located.

(d) The grants shall be authorized and allocated during the 2000–01, 2001–02, and 2002–03 fiscal years. Grants may be expended, under the grant agreement, during a period not to exceed three years from the date that the grant is awarded.

(e) Preference shall be given to projects located within the rice growing regions of the Sacramento Valley and which may be replicated throughout the region.

(f) Projects should demonstrate all of the following:

(1) Technical and economic feasibility.

(2) The capability to become profitable within five years.

(3) Cost-effectiveness.

(4) The extent to which the program mitigates or avoids adverse environmental impacts.

(g) This section shall not become operative until moneys are appropriated for deposit in the Rice Straw Demonstration Project Grant Fund, created pursuant to Section 39751, by the Legislature, or until moneys are transferred to that fund by any other entity.

CHAPTER 1020

An act to amend Sections 22652, 22662, 22705, 22802, 23200, 23201, 23202, 24750, and 24751 of, to add Sections 24300.6, 26144.5, 26403, 26501.5, and 26503.5 to, and to repeal Section 26401.5 of, the Education Code, relating to teachers' retirement, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, other than a retired member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the member's accumulated retirement contributions and service credit under the Defined Benefit Program, or an amount equal to the member's Defined Benefit Supplement account balance, or both, under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit and accumulated retirement contributions under the Defined Benefit Program and any accumulated Defined Benefit Supplement account balance under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member in the Defined Benefit Program or the Defined Benefit Supplement Program, as applicable.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse, including, but not limited to, the following:

(1) The right to a retirement allowance under the Defined Benefit Program and, if applicable, a retirement benefit under the Defined Benefit Supplement Program.

(2) The right to a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the accumulated Defined Benefit Supplement account balance that were awarded to the nonmember spouse.

(3) The right to redeposit all or a portion of accumulated retirement contributions previously refunded to the member which the member is eligible to redeposit pursuant to Sections 23200 to 23203, inclusive, and shall specify the shares of the redeposit amount awarded to the member and the nonmember spouse .

(4) The right to purchase additional service credit that the member is eligible to purchase pursuant to Sections 22800 to 22810, inclusive, and shall specify the shares of the additional service credit awarded to the member and the nonmember spouse .

SEC. 2. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under the Defined Benefit Program may redeposit accumulated retirement contributions previously refunded to the member in accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may redeposit under this part only those accumulated retirement contributions that were previously refunded to the member and in which the court has determined the nonmember spouse has a community property interest.

(b) The nonmember spouse shall inform the system in writing of his or her intent to redeposit within 180 days after the judgment or court order that specifies the redeposit rights of the nonmember spouse is entered. The nonmember spouse's election to redeposit shall be made on a form provided by the system within 30 days after the system mails an election form and the billing.

(c) If the nonmember spouse elects to redeposit under the Defined Benefit Program, he or she shall repay all or a portion of the member's refunded accumulated retirement contributions that were awarded to the nonmember spouse and shall pay regular interest from the date of the refund to the date of payment.

(d) An election to redeposit shall be considered an election to repay all or a part of accumulated retirement contributions previously refunded under the Defined Benefit Program in which the nonmember spouse has a community property interest. All payments shall be received by the system before the effective date of the nonmember spouse's retirement under the Defined Benefit Program. If any payment due because of the election is not received at the system's office in Sacramento within 120

days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall not have a right to redeposit the share of the nonmember spouse in the previously refunded accumulated retirement contributions under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 3. Section 22705 of the Education Code is amended to read:

22705. No service shall be included under this part for which a member of the Defined Benefit Program is entitled to receive a retirement benefit in a lump sum or installment payments, for other than military service, from any public retirement system other than this system, or under the American Gratuity Act No. 4151 relating to service in the Philippine Islands under which 15 or more years of creditable service has accrued, or the San Francisco City and County Employees Retirement System. If a retired member under this part becomes entitled to such a retirement benefit, his or her retirement allowance shall be reduced thereafter to exclude the service upon which the retirement benefit is based, without other change in his or her retirement status. This section shall not apply to any retirement benefit received from a defined contribution plan that is qualified under Section 401(a), Section 403(b), or Section 457 of the Internal Revenue Code.

SEC. 4. Section 22802 of the Education Code is amended to read:

22802. (a) A member who was previously excluded from membership in the Defined Benefit Program may elect to receive credit for:

(1) Service as a substitute excluded under Section 22602.

(2) Service performed on a part-time basis excluded under Section 22601.5 or Section 22604.

(3) Adult education service excluded under Section 22603, as it read on December 31, 1995.

(4) Service as a school nurse excluded under Section 22606, as it read on December 31, 1995.

(5) Service performed in a position prior to the date the position was made subject to coverage under the Defined Benefit Program.

(6) Service subject to coverage under the Defined Benefit Program performed while a member of another California public retirement system, provided the member has ceased to be a member of, and has ceased to be entitled to benefits from, the other retirement system. The member shall not receive credit for the service if the member may

redeposit withdrawn contributions and subsequently be eligible for any benefits based upon the same service or based upon other full-time service performed during the same period, from another California public retirement system.

(b) A member who elects to receive credit under this part for service performed while excluded from membership under the Defined Benefit Program shall pay all of the required contributions for all or the portion of that service for which the member elects to receive credit.

SEC. 5. Section 23200 of the Education Code is amended to read:

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the Defined Benefit Program or is subject to Section 23201, the person may elect to redeposit all or a portion of those contributions with regular interest from the date of refund to the date of payment.

(b) For time prior to July 1, 1944, regular interest shall be at 2 $^{1}/_{2}$ percent compounded annually.

(c) If a nonmember spouse, as defined in Section 22651, withdraws accumulated contributions in accordance with Section 22661, the member may redeposit all or a portion of those contributions pursuant to subdivision (a), providing he or she is not receiving an allowance under Chapter 26 (commencing with Section 24100) or Chapter 27 (commencing with Section 24201).

(d) If a member elects to redeposit a portion of all accumulated retirement contributions that were previously refunded subject to requirements imposed by the board, the member shall receive pro rata service credit in proportion to the amount redeposited.

SEC. 6. Section 23201 of the Education Code is amended to read:

23201. Any person whose accumulated retirement contributions were refunded, who wishes to establish concurrent membership, and who has received, or will qualify to receive, a retirement allowance from one or more of the retirement systems defined in Section 22115.2, may elect to redeposit all or a portion of the accumulated retirement contributions that were refunded, with regular interest from the date of refund to the date of payment, without being employed to perform creditable service subject to coverage under the Defined Benefit Program.

SEC. 7. Section 23202 of the Education Code is amended to read:

23202. (a) An election pursuant to Section 23200 to redeposit accumulated retirement contributions may be made by a member anytime prior to the effective date of the member's retirement under this part.

(b) An election to redeposit refunded accumulated retirement contributions shall be considered as an election to repay accumulated retirement contributions previously refunded, up to but not exceeding

the amount required to restore the total service credit refunded, under the provisions of this chapter.

(c) If any payment due because of this election is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled. Upon the cancellation of election, the member shall receive credit for the payments made under the election or, at the request of the member, those payments shall be refunded.

(d) If the election is canceled, the member may at any time prior to the effective date of retirement under this part, again elect to redeposit accumulated retirement contributions previously withdrawn or refunded, in accordance with Section 23200 and all the laws, rules, and regulations pertaining thereto.

SEC. 8. Section 24300.6 is added to the Education Code, to read:

24300.6. (a) Any retired member who was unmarried on the effective date of retirement who did not elect an option pursuant to Section 24300, and who thereafter marries, may, after the effective date of the member's retirement under this part, elect an option described in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 24300, naming his or her new spouse as the option beneficiary, subject to all of the following:

(1) The retired member shall have been married for at least one year prior to making the election of the option.

(2) The retired member shall notify the board, in writing on a form provided by the system, of the election of the option and the designation of the member's new spouse as the option beneficiary.

(3) The election of an option under this section is subject to approval by the board. A retired member may not elect a joint and survivor option that would result in any additional liability to the retirement fund. A retired member may not elect Option 8.

(4) The election shall be effective six months after the date the notification is received by the board, provided that both the retired member and the retired member's designated spouse are then living.

(b) The election of the option and designation of the option beneficiary under this section shall result in an actuarial modification of the member's retirement allowance that shall be payable through the life of the member and the member's new spouse. Modification of the member's retirement allowance pursuant to this section shall be based on the ages of the retired member and the retired member's new spouse as of the effective date of the election.

(c) This section shall be operative July 1, 2001.

SEC. 9. Section 24750 of the Education Code is amended to read:

24750. Those members who took a refund of their accumulated contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College

District Retirement System or the San Francisco City and County Employees' Retirement System, prior to July 1, 1972, and who have former Permanent Fund contributions only on deposit related to former local system service shall have those accumulated former Permanent Fund contributions on deposit as of July 1, 1972, treated in the same manner as accumulated retirement contributions of all nonlocal members. Upon discovery and notification to those members, they shall do either of the following:

(a) Redeposit all or a portion of the accumulated retirement contributions required to bring the account into full balance with regular interest prior to retirement under this part.

(b) Leave those former Permanent Fund accumulated contributions on deposit and receive a reduced retirement allowance under the law as it read on June 30, 1972.

SEC. 10. Section 24751 of the Education Code is amended to read:

24751. Those members who took a refund of their accumulated retirement contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco City and County Employees' Retirement System, prior to July 1, 1972, and who also took a refund of their Permanent Fund contributions from the State Teachers' Retirement System with respect to the Defined Benefit Program, and who redeposited their contributions in the local system but did not redeposit their Permanent Fund contributions in the State Teachers' Retirement System with respect to the Defined Benefit Program, shall redeposit all or a portion of the accumulated retirement contributions required to bring the account into full balance with regular interest from the date of refund to the date of payment. The redeposit may be made immediately upon notification by the system and shall be made prior to retirement under this part. The redeposit shall be made in a lump sum or by installment payments as specified by the chief executive officer.

SEC. 11. Section 26144.5 is added to the Education Code, to read:

26144.5. ''Trustee service'' means duties performed by a member of the governing body of an employer.

SEC. 12. Section 26401.5 of the Education Code is repealed.

SEC. 13. Section 26403 is added to the Education Code, to read:

26403. A person who performs trustee service for an employer who has elected to provide benefits pursuant to this part to its employees may elect to participate in the Cash Balance Benefit Program for that service.

SEC. 14. Section 26501.5 is added to the Education Code, to read:

26501.5. A person who elects, pursuant to Section 26403, to participate in the Cash Balance Benefit Program shall make

contributions, as provided in Section 26501, based on his or her salary or other compensation earned for trustee service.

SEC. 15. Section 26503.5 is added to the Education Code, to read:

26503.5. If a person elects, pursuant to Section 26403, to participate in the Cash Balance Benefit Program, his or her employer shall make contributions, as provided in Section 26503, based on the salary or other compensation paid for trustee service.

SEC. 16. Sections 1, 2, 5, 6, 7, 8, 9, and 10 of this act shall become operative July 1, 2001.

CHAPTER 1021

An act to amend Sections 22102, 22115, 22161.5, 22170, 22206, 22453, 22651, 22652, 22655, 22656, 22659, 22660, 22661, 22662, 22664, 22703, 22706, 22901.5, 24616, 24617, 25000, 25000.5, 25001, 25002, 25006, 25008, 25009, 25010, 25011, 25012, 25014, 25015, 25016, 25017, 25018, 25019, 25020, 25021, 25023, and 25024 of, to amend and renumber Section 22302 of, to amend, repeal, and add Sections 22119.2, 22905, 22954, 22955, and 24600 of, to add Sections 22101.5, 22144.5, 22146.7, 22177, 22311.5, 22955.5, and 24305.3 to, and to repeal and add Sections 22158, 22460, and 22906 of, the Education Code, relating to retirement, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 22101.5 is added to the Education Code, to read:

22101.5. ''Accumulated Defined Benefit Supplement account balance'' means credits equal to the sum of member contributions, the member contributions picked up by an employer, employer contributions, interest credited pursuant to Section 25005 and additional earnings credited pursuant to Section 25006.

SEC. 2. Section 22102 of the Education Code is amended to read:

22102. ''Accumulated retirement contributions'' means the sum of the member contributions, the member contributions picked up by an employer pursuant to Sections 22903 and 22904, and credited interest on those contributions. Accumulated retirement contributions shall not include accumulated annuity deposit contributions, accumulated

tax-sheltered annuity contributions, accumulated Defined Benefit Supplement account balance, or additional earnings credit.

SEC. 3. Section 22115 of the Education Code is amended to read:

22115. (a) ''Compensation earnable'' means the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis, excluding service for which contributions are credited by the system to the Defined Benefit Supplement Program.

(b) The board may determine compensation earnable for persons employed on a part-time basis.

(c) When service credit for a school year is less than 1.000, compensation earnable shall be the product obtained when creditable compensation paid in that year is divided by the service credit for that year, except as provided in subdivision (d).

(d) When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least .900 of a year, compensation earnable shall be determined as if all service credit for that year had been earned at the highest pay rate. This subdivision shall be applicable only for purposes of determining final compensation. When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than .900 of a year, compensation earnable shall be determined pursuant to subdivision (c).

(e) The amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2003.

SEC. 4. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) ''Creditable compensation'' means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

(4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board awarding certifications, in which eligibility for this certification is based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be ''creditable compensation.''

(b) ''Creditable compensation'' does not mean and shall not include:

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

(8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

(11) Any other payments the board determines not to be ''creditable compensation.''

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of ''creditable compensation'' in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 22119.2 is added to the Education Code, to read:

22119.2. (a) ''Creditable compensation'' means remuneration that is payable in cash by an employer to all persons in the same class of employees and is paid to an employee for performing creditable service. Creditable compensation shall include:

(1) Salary paid in accordance with a salary schedule or employment agreement.

(2) Remuneration that is paid in addition to salary, providing it is payable to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).

(4) Member contributions that are picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts that are deducted from a member's compensation, including, but not limited to, salary deductions for participation in a deferred compensation plan; deductions to purchase an annuity contract, tax- deferred retirement plan, or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Any other payments the board determines to be ''creditable compensation.''

(b) Any salary or other remuneration determined by the board to have been paid for the principal purpose of enhancing a member's benefits under the plan shall not be credited under the Defined Benefit Program. Contributions on that compensation shall be credited to the Defined Benefit Supplement Program. A presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing the member's benefits under the plan may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing the member's benefits under the plan may be reversed.

(c) ''Creditable compensation'' does not mean and shall not include:

(1) Remuneration that is not payable in cash or is not payable to all persons who are in the same class of employees.

(2) Remuneration that is paid for service that is not creditable service pursuant to Section 22119.5.

(3) Remuneration that is paid in addition to salary if it is not payable to all persons in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).

(4) Remuneration that is paid for unused accumulated leave.

(5) Annuity contracts, tax-deferred retirement plans, or insurance programs and contributions to plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code when

the cost is covered by an employer and is not deducted from the member's salary.

(6) Fringe benefits provided by an employer.

(7) Job-related expenses paid or reimbursed by an employer.

(8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.

(9) Any other payments the board determines not to be ''creditable compensation.''

(d) An employer or individual who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (c) shall reimburse the plan for benefit overpayments that occur because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered payable if it would be paid to any person who meets the qualifications or requirements specified in a collective bargaining agreement or an employment agreement as a condition of receiving the remuneration.

(f) This definition of ''creditable compensation'' reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, preventing adverse selection, and excluding from compensation earnable remuneration that is paid for the principal purpose of enhancing a member's benefits under the plan. The board shall determine the appropriate crediting of contributions between the Defined Benefit Program and the Defined Benefit Supplement Program according to these principles, to the extent not otherwise specified pursuant to this part.

(g) The section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.

SEC. 6. Section 22144.5 is added to the Education Code, to read:

22144.5. ''Liability gains and losses'' means the difference between actual noninvestment related experience and the experience expected based upon a set of noninvestment related actuarial assumptions during the period between two actuarial valuation dates, as determined in accordance with assumptions adopted by the board pursuant to Section 22311.5.

SEC. 7. Section 22146.7 is added to the Education Code, to read:

22146.7. ''Minimum interest rate'' means the annual interest rate determined by the board by plan amendment at which interest shall be credited to Defined Benefit Supplement accounts for a plan year.

SEC. 8. Section 22158 of the Education Code is repealed.

SEC. 9. Section 22158 is added to the Education Code, to read:

22158. (a) ''Projected service'' means the sum of credited service plus the credited service that would have been earned for the school years during which a disability allowance was payable if the member had performed creditable service during that time.

(b) Projected service for a school year shall be determined on the basis of the highest credited service earned by the member during any one of the three school years immediately preceding the member's death or the date the disability allowance began to accrue.

(c) Projected service shall not include credited service for which contributions have been credited to the Defined Benefit Supplement Program.

SEC. 10. Section 22161.5 of the Education Code is amended to read:

22161.5. ''Refund'' means the lump-sum return of a member's accumulated retirement contributions under the Defined Benefit Program and does not include the balance of credits in the member's Defined Benefit Supplement account.

SEC. 11. Section 22170 of the Education Code is amended to read:

22170. ''Service'' means work performed for compensation in a position subject to coverage under the Defined Benefit Program, except as otherwise specifically provided in this part, providing the contributions on compensation for that work are not credited to the Defined Benefit Supplement Program.

SEC. 12. Section 22177 is added to the Education Code, to read:

22177. (a) ''Unfunded actuarial obligation,'' with respect to the Defined Benefit Program, means that portion of the actuarial present value of benefits that is not provided for by future, normal costs or covered by the actuarial value of assets attributable to the Defined Benefit Program, based on assumptions adopted by the board pursuant to Section 22311.5.

(b) ''Unfunded actuarial obligation,'' with respect to the Defined Benefit Supplement Program, means that portion of the actuarial present value of benefits that is not provided for by future, normal costs or covered by the actuarial value of assets attributable to the Defined Benefit Supplement Program, based on assumptions adopted by the board pursuant to Section 22311.5.

SEC. 13. Section 22206 of the Education Code is amended to read:

22206. (a) As often as the board determines necessary, it may audit or cause to be audited the records of any public agency.

(b) The board may excuse any audit finding provided all of the following conditions are met:

(1) The audit finding relates to a period of time prior to July 1, 2002.

(2) The audit finding identifies an issue that is not in compliance with the provisions of this part with respect to creditable service or creditable compensation.

(3) The noncompliance would not have existed if the service and compensation crediting changes that shall become operative on July 1, 2002, as a result of legislation enacted during the second year of the 1999–2000 Regular Session, had been operative during the period of time investigated in the audit.

(4) The audit finding was included in an audit report issued on or after January 1, 2001.

(5) Excusing the audit finding will not have an adverse effect on the integrity of the retirement fund.

(c) The board's authority pursuant to subdivision (b) shall extend to service and compensation issues identified through activities outside the audit function that address compliance with the provisions of this part.

SEC. 13.5. Section 22302 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended and renumbered to read:

22302.5. The board may contract with a qualified third-party administrator for custodial, record keeping, or other administrative services necessary to carry into effect the provisions of Chapter 38 (commencing with Section 25000) of this part or Part 14.

SEC. 14. Section 22311.5 is added to the Education Code, to read:

22311.5. The board shall acquire the services of an actuary to do all of the following:

(a) Make recommendations to the board for the adoption of actuarial assumptions that, in the aggregate, are reasonably related to the past experience of the plan and reflect the actuary's informed estimate of the future experience.

(b) Make an actuarial investigation of the demographic and economic experience, including the mortality, service, and other experience, of the plan with respect to members and beneficiaries of the Defined Benefit Program; members, beneficiaries, and annuity beneficiaries of the Defined Benefit Supplement Program; and participants and beneficiaries of the Cash Balance Benefit Program.

(c) Make an annual actuarial review of the goals regarding the sufficiency of the Gain and Loss Reserves with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program and make recommendations to the board for maintaining a sufficient Gain and Loss Reserves for the Defined Benefit Supplement Program and the Cash Balance Benefit Program.

(d) Recommend to the board the amount, if any, to be transferred to the separate Gain and Loss Reserves from the investment earnings of the plan with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program.

(e) At least once every six years with respect to the Defined Benefit Program and annually with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program, using actuarial assumptions adopted by the board, perform an actuarial valuation of each program that identifies the assets and liabilities, and report the findings to the board. The report of the actuary on the results of each actuarial valuation shall identify and include the components of normal cost, if applicable, and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on each actuarial valuation shall be transmitted to the Governor and the Legislature.

(f) Recommend to the board all rates and factors necessary to administer the plan, including, but not limited to, mortality tables, annuity factors, interest rates, and additional earnings credits.

(g) Recommend to the board a strategy for amortizing any unfunded actuarial obligation.

(h) As requested by the board, perform any other actuarial services that may be required for administration of the plan.

SEC. 15. Section 22453 of the Education Code is amended to read:

22453. (a) Except as provided in Section 22454, the signature of the spouse of a member shall be required under the Defined Benefit Program on any application for, or cancellation of, an unmodified allowance; the election, change, or cancellation of an option; or any request for a refund of the member's accumulated retirement contributions or accumulated annuity deposit contributions ; and under the Defined Benefit Supplement Program on any application for, or cancellation of, a retirement benefit, disability benefit, or termination benefit; and under either the Defined Benefit Program or the Defined Benefit Supplement Program on any other requests related to the selection of benefits by a member in which a spousal interest may be present, unless the member declares, in writing, under penalty of perjury, that one of the following conditions exists:

(1) The member is not married.

(2) The current spouse has no identifiable community property interest in the benefit.

(3) The member and spouse have executed a marriage settlement agreement pursuant to Part 5 (commencing with Section 1500) of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

(4) The spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.

(5) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(b) This section shall not be applicable to an application for a disability allowance under the Defined Benefit Program.

(c) The sole purpose of this section is to provide for spousal protection in the selection of specified benefits made by a member.

SEC. 16. Section 22460 of the Education Code is repealed.

SEC. 17. Section 22460 is added to the Education Code, to read:

22460. (a) If a member terminates employment with less than five years of credited service, the employer shall notify the member of the following:

(1) That unless the member is eligible, or becomes eligible in the future, for concurrent retirement pursuant to paragraph (2) of subdivision (a) of Section 24201, the member is eligible only for a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the member's accumulated Defined Benefit Supplement account balance.

(2) The current rate of interest that shall be earned on accumulated retirement contributions that are not refunded and the current minimum interest rate that shall be applied to the member's Defined Benefit Supplement account.

(3) Actions that may be taken by the board if accumulated retirement contributions are not refunded under the Defined Benefit Program and the member's Defined Benefit Supplement account balance is not returned.

(b) Employers shall transmit to a member who terminates employment with less than five years of credited service the information specified in subdivision (a) as part of the usual separation documents.

SEC. 18. Section 22651 of the Education Code is amended to read:

22651. For purposes of this chapter and Section 23300, ''nonmember spouse'' means a member's spouse or former spouse who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part. A nonmember spouse shall not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation or dissolution of marriage: a separate account of service credit and accumulated retirement contributions, a retirement allowance, or an interest in the member's retirement allowance under the Defined Benefit Program; or a separate account based on the member's Defined Benefit Supplement account balance, a retirement benefit, or an interest in the member's retirement benefit under the Defined Benefit Supplement Program.

SEC. 19. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, other than a retired member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the member's accumulated retirement contributions and service credit under the Defined Benefit Program or the member's Defined Benefit Supplement account balance, or both, under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit and accumulated retirement contributions under the Defined Benefit Program and any accumulated Defined Benefit Supplement account balance under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member under the Defined Benefit Program or the Defined Benefit Supplement Program, whichever is applicable.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse under this part, including, but not limited to, the following:

(1) The right to a retirement allowance under the Defined Benefit Program and, if applicable, a retirement benefit under the Defined Benefit Supplement Program.

(2) The right to a refund of accumulated retirement contributions and the return of the accumulated Defined Benefit Supplement account balance that were awarded to the nonmember spouse.

(3) The right to redeposit accumulated retirement contributions previously refunded to the member which the member is eligible to redeposit pursuant to Sections 23200 to 23203, inclusive, and shall specify the shares of the redeposit amount awarded to the member and the nonmember spouse.

(4) The right to purchase additional service credit that the member is eligible to purchase pursuant to Sections 22800 to 22810, inclusive, and shall specify the shares of the additional service credit awarded to the member and the nonmember spouse.

SEC. 19.5. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, other than a retired member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the member's accumulated retirement contributions and service credit under the Defined Benefit Program, or the member's Defined Benefit Supplement account balance, or both, under this part that are attributable to periods of service during the marriage be divided into two separate and

distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit and accumulated retirement contributions under the Defined Benefit Program and any accumulated Defined Benefit Supplement account balance under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member under the Defined Benefit Program or the Defined Benefit Supplement Program, as applicable.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse under this part, including, but not limited to, the following:

(1) The right to a retirement allowance under the Defined Benefit Program and, if applicable, a retirement benefit under the Defined Benefit Supplement Program.

(2) The right to a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the accumulated Defined Benefit Supplement account balance that were awarded to the nonmember spouse.

(3) The right to redeposit all or a portion of accumulated retirement contributions previously refunded to the member which the member is eligible to redeposit pursuant to Sections 23200 to 23203, inclusive, and shall specify the shares of the redeposit amount awarded to the member and the nonmember spouse.

(4) The right to purchase additional service credit that the member is eligible to purchase pursuant to Sections 22800 to 22810, inclusive, and shall specify the shares of the additional service credit awarded to the member and the nonmember spouse.

SEC. 20. Section 22655 of the Education Code is amended to read:

22655. (a) Upon the legal separation or dissolution of marriage of a retired member, the court may include in the judgment or court order a determination of the community property rights of the parties in the retired member's retirement allowance and, if applicable, retirement benefit under this part consistent with this section. Upon election under subparagraph (B) of paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the retirement allowance or retirement benefit, or both, of a retired member shall be consistent with this section.

(b) If the court does not award the entire retirement allowance or retirement annuity under this part to the retired member and the retired member is receiving a retirement allowance that has not been modified pursuant to Section 24300, or a single life annuity pursuant to Section 25011 or 25018, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property

share of the retired member's retirement allowance or retirement benefit, or both, under this part.

(c) If the court does not award the entire retirement allowance or retirement benefit under this part to the retired member and the retired member is receiving an allowance that has been actuarially modified pursuant to Section 24300, or a joint and survivor retirement benefit pursuant to Section 25011 or 25018, the court shall order only one of the following:

(1) The retired member shall maintain the retirement allowance or retirement benefit, or both, under this part without change.

(2) The retired member shall cancel the option that modified the retirement allowance under this part pursuant to Section 24305 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance under this part of the retired member, the option beneficiary, or both.

(3) The retired member shall cancel the joint and survivor annuity under which the annuity is being paid pursuant to Section 24305.3, and select a new joint and survivor annuity or a new annuity beneficiary or both, based on the actuarial equivalent of the member's canceled annuity, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement annuity payable to the retired member, the annuity beneficiary, or both.

(4) The retired member shall take the action specified in both paragraphs (2) and (3).

(5) The retired member shall cancel the option that modified the retirement allowance under this part pursuant to Section 24305 and select an unmodified retirement allowance and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retired member's retirement allowance under this part.

(6) The retired member shall cancel, pursuant to Section 24305.3, the joint and survivor annuity under which the retirement benefit is being paid, and select a single life annuity, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement benefit payable benefit to the retired member.

(7) The retired member shall take the action specified in both paragraphs (5) and (6).

(d) If the option beneficiary or annuity beneficiary or both under this part, other than the nonmember spouse, predeceases the retired member, the court shall order the retired member to select a new option beneficiary pursuant to Section 24306, or a new annuity beneficiary pursuant to Section 24305.3 and shall order the system to pay the nonmember spouse, by separate warrant, his or her share of the community property interest in the retirement allowance or retirement

benefit or both under this part of the retired member or the new option beneficiary or annuity beneficiary or each of them.

(e) The right of the nonmember spouse to receive his or her community property share of the retired member's retirement allowance or retirement benefit or both under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary under the Defined Benefit Program and a payee under the Defined Benefit Supplement Program to receive his or her community property share of the retired member's accumulated retirement contributions and accumulated Defined Benefit Supplement account balance under this part in the event that there are remaining accumulated retirement contributions and a balance of credits in the member's Defined Benefit Supplement account to be paid upon the death of the nonmember spouse.

SEC. 21. Section 22656 of the Education Code is amended to read:

22656. No judgment or court order issued pursuant to this chapter is binding on the system with respect to the Defined Benefit Program or the Defined Benefit Supplement Program until the system has been joined as a party to the action and has been served with a certified copy of the judgment or court order.

SEC. 22. Section 22659 of the Education Code is amended to read:

22659. Upon being awarded a separate account or an interest in the retirement allowance or retirement benefit of a retired member under this part, a nonmember spouse shall provide the system with proof of his or her date of birth, social security number, and any other information requested by the system, in the form and manner requested by the system.

SEC. 23. Section 22660 of the Education Code is amended to read:

22660. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions under the Defined Benefit Program and to designate a payee to receive the accumulated Defined Benefit Supplement account balance under the Defined Benefit Supplement Program remaining in the separate account of the nonmember spouse on his or her date of death, and any accrued allowance or accrued benefit under the Defined Benefit Supplement that is attributable to the separate account of the nonmember spouse and that is unpaid on the date of the death of the nonmember spouse.

(b) This section shall not be construed to provide the nonmember spouse with any right to elect to modify a retirement allowance under Section 24300 or to elect a joint and survivor annuity under the Defined Benefit Supplement Program.

SEC. 24. Section 22661 of the Education Code is amended to read:

22661. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to a refund of the accumulated retirement contributions in the account under the Defined Benefit Program, and a return of the Defined Benefit Supplement account balance, of the nonmember spouse under this part.

(b) The nonmember spouse shall file an application on a form provided by the system to obtain a refund or lump-sum payment.

(c) The refund of accumulated retirement contributions and the return of the accumulated Defined Benefit Supplement account balance under this part are effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember spouse and addressed to the latest address for the nonmember spouse on file with the system. If the nonmember spouse has elected on a form provided by the system to transfer all or a specified portion of the accumulated retirement contributions or accumulated Defined Benefit Supplement account balance that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 402), deposit in the United States mail of a notice that the requested transfer has been made constitutes a refund of the nonmember spouse's accumulated retirement contributions or accumulated Defined Benefit Supplement account balance.

(d) The nonmember spouse is deemed to have permanently waived all rights and benefits pertaining to the service credit, accumulated retirement contributions, and accumulated Defined Benefit Supplement account balance under this part when the refund and lump-sum payment become effective.

(e) The nonmember spouse may not cancel a refund or lump-sum payment under this part after it is effective.

(f) The nonmember spouse shall not have a right to elect to redeposit the refunded accumulated retirement contributions under this part after the refund is effective, to redeposit under Section 22662 or purchase additional service credit under Section 22663 after the refund becomes effective, or to redeposit the accumulated Defined Benefit Supplement account balance after the lump-sum payment becomes effective.

(g) If the total service credit in the separate account of the nonmember spouse under the Defined Benefit Program, including service credit purchased under Sections 22662 and 22663, is less than two and one-half years, the board shall refund the accumulated retirement contributions in the account.

SEC. 25. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under the Defined Benefit Program may redeposit accumulated retirement contributions previously refunded to the member in

accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may redeposit under the Defined Benefit Program only those accumulated retirement contributions that were previously refunded to the member and in which the court has determined the nonmember spouse has a community property interest.

(b) The nonmember spouse shall inform the system in writing of his or her intent to redeposit within 180 days after the judgment or court order that specifies the redeposit rights of the nonmember spouse is entered. The nonmember spouse's election to redeposit shall be made on a form provided by the system within 30 days after the system mails an election form and the billing.

(c) If the nonmember spouse elects to redeposit under the Defined Benefit Program, he or she shall repay the portion of the member's refunded accumulated retirement contributions that were awarded to the nonmember spouse and shall pay regular interest from the date of the refund to the date payment of the redeposit is completed.

(d) An election to redeposit shall be considered an election to repay all accumulated retirement contributions previously refunded under this part in which the nonmember spouse has a community property interest. All payments shall be received by the system before the effective date of the nonmember spouse's retirement under this part. If any payment due because of the election is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall not have a right to redeposit the share of the nonmember spouse in the previously refunded accumulated retirement contributions under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 25.5. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under the Defined Benefit Program may redeposit accumulated retirement contributions previously refunded to the member in accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may redeposit under the Defined Benefit Program only those accumulated retirement contributions that were

previously refunded to the member and in which the court has determined the nonmember spouse has a community property interest.

(b) The nonmember spouse shall inform the system in writing of his or her intent to redeposit within 180 days after the judgment or court order that specifies the redeposit rights of the nonmember spouse is entered. The nonmember spouses' election to redeposit shall be made on a form provided by the system within 30 days after the system mails an election form and the billing.

(c) If the nonmember spouse elects to redeposit under the Defined Benefit Program, he or she shall repay all or a portion of the member's refunded accumulated retirement contributions that were awarded to the nonmember spouse and shall pay regular interest from the date of the refund to the date payment of the redeposit is completed.

(d) All payments shall be received by the system before the effective date of the nonmember spouse's retirement under this part. If any payment due because of the election is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall not have a right to redeposit the share of the nonmember spouse in the previously refunded accumulated retirement contributions under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 26. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance and, if applicable, a retirement benefit under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated retirement contributions. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, out-of-state service, and permissive service credit that the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento and the effective date is after the date the judgment or court order pursuant to Section 22652 was entered.

(c) (1) Upon service retirement at normal retirement age under this part, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments equal to 2 percent of final compensation for each year of credited service.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

Age at Retirement	Percentage
60 1/4	2.033
60 1/2	2.067
60 3/4	2.10
61	2.133
61 1/4	2.167
61 1/2	2.20
61 3/4	2.233
62	2.267
62 1/4	2.30
62 1/2	2.333
62 3/4	2.367
63 and over	2.40

(4) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse on the last day of the month in which the retirement allowance begins to accrue shall be used.

(5) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22134, 22135, or 22136, whichever is applicable, and shall be based on the member's compensation earnable up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652. The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance under this part with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates. If the member who is or was receiving a disability allowance returns to employment to perform creditable service subject to coverage under the Defined Benefit Program or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to employment to perform creditable service subject to coverage under the Defined Benefit Program, or the termination of the disability allowance and the employment or self-employment of the member in any capacity, notwithstanding Section 22132. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was receiving, exclusive of the portion for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the portion for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's retirement allowance shall be the lesser of the share of the nonmember spouse under this subdivision or the retirement allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Section 24213.

(e) The nonmember spouse who receives a retirement allowance is not a retired member under this part. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions under this part, including, but not limited to, Sections 24411, 24412, and 24415 based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

SEC. 27. Section 22703 of the Education Code is amended to read:

22703. (a) Service shall be credited to the Defined Benefit Program, except as provided in subdivision (b).

(b) A member's creditable service that exceeds 1.000 in a school year shall not be credited to the Defined Benefit Program. Commencing July 1, 2002, contributions by the employer that are deposited in the Teachers' Retirement Fund and the member on creditable compensation paid to the member for that service, exclusive of contributions pursuant to Section 22951, shall be credited to the Defined Benefit Supplement Program.

(c) In lieu of any other benefits provided by this part, any member who performed service prior to July 1, 1956, shall receive retirement benefits for that service at least equal to the benefits that the member would have received for that service under the provisions of this part as they existed on June 30, 1956. This subdivision shall not apply to service that is credited in the San Francisco City and County Employees Retirement System.

(d) The amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2003.

SEC. 28. Section 22706 of the Education Code is amended to read:

22706. A member shall not receive credit for service performed while receiving a retirement or disability allowance under the Defined Benefit Program or while receiving a retirement or disability benefit under the Defined Benefit Supplement Program.

SEC. 29. Section 22901.5 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

22901.5. (a) Notwithstanding Section 22905, 25 percent of the amount contributed by a member pursuant to Section 22901 (2 percent of creditable compensation) shall be credited to the member's Defined Benefit Supplement account pursuant to Section 25004.

(b) Any member contributions for service performed during the 2000–01 school year with a service period ending after December 31, 2000, shall be subject to subdivision (a).

(c) This section 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. 30. Section 22905 of the Education Code is amended to read:

22905. (a) Contributions made by a member and member contributions made by an employer pursuant to Section 22903 and 22904 shall be credited by the board to the individual account of the member.

(b) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003. As of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 31. Section 22905 is added to the Education Code, to read:

22905. (a) Member contributions pursuant to Section 22901 and employer contributions pursuant to Sections 22903 and 22904 shall be credited to the member's individual account under the Defined Benefit Program or the Defined Benefit Supplement Program, whichever is applicable pursuant to the provisions of this part.

(b) Member and employer contributions on a member's compensation under the following circumstances shall be credited to the member's Defined Benefit Supplement account:

(1) Compensation for creditable service that exceeds one year in a school year.

(2) Compensation that is consistent with subdivision (b) of Section 22119.2.

(3) Compensation that is payable for a specified number of times as limited by law, a collective bargaining agreement, or an employment agreement.

(c) A member shall not make voluntary pretax or posttax contributions under the Defined Benefit Supplement Program, except as provided in subdivision (d), nor shall a member redeposit amounts previously distributed based on the balance in the member's Defined Benefit Supplement account.

(d) Member and employer contributions under the Defined Benefit Supplement Program shall be credited to the accounts of members as of June 30 each year following a determination by the system under the provisions of this part that those contributions should be credited to the Defined Benefit Supplement Program. Contributions to a member's Defined Benefit Supplement account shall be identified separately from the member's contributions credited under the Defined Benefit Program.

(e) The provisions of this section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.

SEC. 32. Section 22906 of the Education Code is repealed.

SEC. 33. Section 22906 is added to the Education Code, to read:

22906. A member's contributions that were made with respect to service that was erroneously credited under the Defined Benefit Program shall be returned to the member if the contributions for that service cannot be credited under the Defined Benefit Supplement Program pursuant to this part.

SEC. 34. Section 22954 of the Education Code is amended to read:

22954. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based for purposes of funding the supplemental payments authorized by Section 24415.

(b) The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.

(c) It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund in order to provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415.

(d) This section shall become inoperative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2004. As of January 1, 2005, this section is repealed unless a later

enacted statute, that becomes effective on or before January 1, 2005, deleted or extends the date on which it becomes inoperative and is repealed.

SEC. 35. Section 22954 is added to the Education Code, to read:

22954. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 2003, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based for purposes of funding the supplemental payments authorized by Section 24415.

(b) The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.

(c) It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund in order to provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415.

(d) This section shall become operative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2004.

SEC. 36. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 2001, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 1.975 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. For the 2000–01 fiscal year only, the total amount of the appropriation pursuant to this subdivision shall be equal to 2.5385 percent of the total of the creditable compensation of calendar year 1999.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1998, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made

from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero.

The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability of the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term ''normal cost deficit'' means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22311 and the total of the member contribution rate required under Section 22901 and the employer contribution rate required under Section 22950, and shall exclude (1) the portion for unused sick leave service credit granted pursuant to Section 22717, and (2) the cost of benefit increases that occur after July 1, 1990. The contribution rates prescribed in Section 22901 and Section 22950 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions under this part are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and case law, members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate under this part that occurs after July 1, 1990.

(g) The amendments to this section during the 1991–92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(h) This section shall become inoperative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2004. As of January 1, 2005, this section is repealed unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 37. Section 22955 is added to the Education Code, to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 2003, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.017 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 2003, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero. The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability of the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term ''normal cost deficit'' means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22311 and the total of the member contribution rate required under Section 22901 and the employer contribution rate required under Section 22950, and shall exclude (1) the portion for unused sick leave service credit granted pursuant to Section 22717, and (2) the cost of benefit increases that occur after July 1, 1990. The contribution rates prescribed in Section 22901 and Section 22950 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions under this part are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and case law, members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate under this part that occurs after July 1, 1990.

(g) The provisions of this section shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(h) This section shall become operative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2004.

SEC. 38. Section 22955.5 is added to the Education Code, to read:

22955.5. For purposes of Sections 22954 and 22955, ''creditable compensation'' shall include only creditable compensation for which member contributions are credited under the Defined Benefit Program.

SEC. 39. Section 24305.3 is added to the Education Code, to read:

24305.3. (a) A member who is receiving a joint and survivor annuity under the Defined Benefit Supplement Program may change the annuity or the annuity beneficiary elected pursuant to Section 25011 or 25018 provided all of the following conditions are met:

(1) The annuity beneficiary is the member's spouse or former spouse.

(2) A final decree of dissolution of marriage is granted, or a judgment of nullity is entered, or an order of separate maintenance is made by a

court of competent jurisdiction with respect to the member and the spouse or former spouse on or after the beginning of the initial plan year designated by the board pursuant to Section 22156.05.

(3) The change is consistent with the final decree of dissolution, judgment of nullity, or order of separate maintenance.

(b) A member may change the annuity pursuant to subdivision (a) before or after the first annuity payment is issued.

(c) The member shall notify the system in writing of the change in the annuity. The notification shall not be earlier than the effective date of the final decree of dissolution, judgment of nullity, or order of separate maintenance and shall include a certified copy of the final decree of dissolution, judgment of nullity, or order of separate maintenance, and any property settlement agreement.

(d) A change in the annuity or annuity beneficiary or both shall become effective on the date the notification of change is received by the system. The annuity amount payable to the member upon the change elected by the member shall be determined as of the effective date of the change and shall be the actuarial equivalent of the lump sum that would otherwise be payable to the member as of the date of the change. If the member elects a joint and survivor annuity, the amount payable under the annuity shall be modified consistent with the annuity elected by the member.

SEC. 40. Section 24600 of the Education Code, as amended by Chapter 965 of the Statutes 1998, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability allowance and ceases on the earlier of the day of the member's death or the day on which the disability allowance is terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

(1) Until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is eligible as a full-time student to receive a child's portion of an allowance shall continue to be eligible for a child's portion until the person attains 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age.

(2) Notwithstanding subdivision (e) of Section 22123, until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is not eligible as a full-time student to receive a child's portion of an allowance, may return to school on a full-time basis on or after January 1, 1997, and become eligible for a child's portion from the date of return to full-time student status until 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age. No benefits shall be payable under this paragraph for a person who does not return to school as a full-time student prior to attaining 22 years of age.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions payable under the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be made in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended, and regulations . The required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be either:

(1) In the case of a refund of contributions, as described in Chapter 18 (commencing with Section 23100) of this part and distribution of an amount equal to the balance of credits in a member's Defined Benefit Supplement account, as described in Chapter 38 (commencing with Section 25000) of this part, not later than April 1 of the calendar year following the later of both of the following:

(A) The calendar year in which the member attains age $70^1/_2$ years.

(B) The calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22166, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains age $70^1/_2$ years; or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase ''terminates employment'' means the later of :

(1) The date the member ceases to perform creditable service subject to coverage under this plan.

(2) The date the member ceases employment in a position subject to coverage under another public retirement system in this state if the compensation earnable while a member of the other system may be considered in the determination of final compensation pursuant to Section 22134, 22135, or 22136.

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

SEC. 41. Section 24600 of the Education Code, as amended by Chapter 74 of the Statutes of 2000, is repealed.

SEC. 42. Section 24600 is added to the Education Code, to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance is terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions payable under the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be made in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended, and related regulations. The required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be either:

(1) In the case of a refund of contributions, as described in Chapter 18 (commencing with Section 23100) of this part, and distribution of an amount equal to the balance of credits in a member's Defined Benefit Supplement account, as described in Chapter 38 (commencing with Section 25000) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains $70^1/_2$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22166, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains $70^1/_2$ years of age

or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), ''terminates employment'' means the later of:

(1) The date the member ceases to perform creditable service subject to coverage under this plan.

(2) The date the member ceases employment in a position subject to coverage under another public retirement system in this state if the compensation earnable while a member of the other system may be considered in the determination of final compensation pursuant to Section 22134, 22135, or 22136.

(j) This section shall become operative on January 1, 2002.

SEC. 43. Section 24616 of the Education Code is amended to read:

24616. Any overpayment made to or on behalf of any member, former member, or beneficiary, including but not limited to contributions, interest, benefits of any kind, federal or state tax, or insurance premiums, shall be deducted from any subsequent benefit that may be payable under either the Defined Benefit Program or the Defined Benefit Supplement Program. These deductions shall be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of the recovery the extent of liability for restitution.

SEC. 44. Section 24617 of the Education Code is amended to read:

24617. (a) To recover an amount overpaid under this part, the corrected monthly allowance payable under the Defined Benefit Program or benefit payable under the Defined Benefit Supplement Program may be reduced by no more than 5 percent if the overpayment was due to error by the system, the county superintendent of schools, a school district, or a community college district, and by no more than 15 percent if the error was due to inaccurate information or nonsubmission of information by the recipient of the allowance or benefit.

(b) This section shall not apply to the collection of overpayments due to fraud or intentional misrepresentation of facts by the recipient of the allowance or benefit.

SEC. 45. Section 25000 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25000. The Defined Benefit Supplement Program is hereby established to provide supplemental benefits for members of the Defined Benefit Program. The Teachers' Retirement Board shall administer the Defined Benefit Supplement Program in accordance with the provisions of this part.

SEC. 46. Section 25000.5 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25000.5. The design and administration of the Defined Benefit Supplement Program shall comply with the applicable provisions of the Internal Revenue Code and the Revenue and Taxation Code. The board may amend the plan with respect to the Defined Benefit Supplement Program to do any of the following:

(a) Comply with applicable federal law and regulations to the extent permitted by law.

(b) Adopt or amend actuarial assumptions.

(c) Designate the initial plan year.

(d) Declare the annual the minimum interest rate.

(e) Declare an additional earnings credit.

(f) Declare an additional annuity credit.

SEC. 47. Section 25001 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25001. (a) The board shall establish a segregated account within the retirement fund to be known as the Gain and Loss Reserve, and the board shall have sole authority over the reserve. The Gain and Loss Reserve shall be maintained for the Defined Benefit Supplement Program and may be used to credit interest at the minimum interest rate for plan years in which the board determines that the obligation cannot be met from investment earnings. The Gain and Loss Reserve may also be used to provide additions to the Annuitant Reserve for monthly annuities payable under the Defined Benefit Supplement Program.

(b) The board shall establish a goal for the balance of the Gain and Loss Reserve and periodically shall review the sufficiency of the reserve based on the recommendations of the actuary.

(c) The board may allocate excess earnings of the plan with respect to assets attributable to the Defined Benefit Supplement Program to the Gain and Loss Reserve. In addition, the board may allocate any liability gains and losses attributable to the Defined Benefit Supplement Program to the Gain and Loss Reserve. Upon the recommendation of the actuary, the board shall determine annually the amount, if any, that is to be allocated to the Gain and Loss Reserve for that plan year. That determination shall be made upon recommendation of the actuary after adoption of the actuarial valuation undertaken following the plan year pursuant to Section 22311.5, but no later than June 30 following the end of the plan year. In determining whether to allocate excess earnings to the Gain and Loss Reserve, the board shall consider all of the following:

(1) Whether or not the plan has excess earnings attributable to the Defined Benefit Supplement Program.

(2) The sufficiency of the Gain and Loss Reserve in light of the goal established pursuant to subdivision (b).

(3) The amount required for the plan's administrative costs with respect to the Defined Benefit Supplement Program.

(4) The amount required for crediting members' accounts at the minimum interest rate.

(d) In determining whether to allocate liability gains and losses to the Gain and Loss Reserve, the board shall consider the matters described in paragraphs (2), (3), and (4) of subdivision (c).

SEC. 48. Section 25002 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25002. The board shall establish and maintain a segregated account within the retirement fund to be known as the Annuitant Reserve and the board shall have sole authority over the reserve. The Annuitant Reserve shall be used for the payment of annuities under the Defined Benefit Supplement Program. The board shall transfer the balance of credits in a member's accumulated Defined Benefit Supplement account to the reserve when a benefit is to be paid as an annuity.

SEC. 49. Section 25006 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25006. (a) The board may declare an additional earnings credit to be applied to Defined Benefit Supplement accounts for a plan year. Prior to declaring an additional earnings credit, the board shall consider all of the following:

(1) Whether the plan's investment earnings with respect to the Defined Benefit Supplement Program for the plan year exceed the amount required to meet the liabilities identified in paragraphs (2), (3), and (4).

(2) The amount required for the plan year to credit interest on members' nominal accounts at the minimum interest rate.

(3) The amount of the plan's administrative expenses with respect to the Defined Benefit Supplement Program for the plan year.

(4) The sufficiency of the Gain and Loss Reserve and whether any additions must be made to that reserve.

(b) For any plan year that the board declares an additional earnings credit, the board shall specify the amount to be added to members' accounts as a percentage increase. The additional earnings credit shall be applied to the balance of credits in each member's nominal account as of the last day of the plan year and shall be applied as of the date specified by the board. The additional earnings credit shall not be added to the balance of credits transferred from a member's Defined Benefit Supplement account to the Annuitant Reserve.

(c) The declaration of an additional earnings credit shall be made as a plan amendment adopted by the board with respect to the Defined Benefit Supplement Program upon recommendation of the actuary after adoption of the actuarial valuation undertaken following the plan year

pursuant to Section 22311.5, but no later than June 30 following the end of the plan year.

SEC. 50. Section 25008 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25008. A member's right to an amount equal to the member's Defined Benefit Supplement account balance shall be vested at the time contributions are initially credited to the member's account.

SEC. 51. Section 25009 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25009. (a) A member's retirement benefit under the Defined Benefit Supplement Program shall be an amount equal to the balance of credits in the member's Defined Benefit Supplement account on the date the retirement benefit becomes payable.

(b) A retirement benefit shall be a lump-sum payment, or an annuity payable in monthly installments, or a combination of both a lump-sum payment and an annuity, as elected by the member on the application for a retirement benefit. Any retirement benefit paid as an annuity under this chapter shall be subject to Section 25011.

(c) Upon distribution of the entire retirement benefit in a lump-sum payment, no other benefit shall be payable to the member or the member's beneficiary under the Defined Benefit Supplement Program.

SEC. 52. Section 25010 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25010. (a) A member who meets the following eligibility requirements shall receive a retirement benefit under the Defined Benefit Supplement Program:

(1) The member has terminated all employment to perform creditable service subject to coverage by the plan. The member's employer, or employers if the member has multiple employers, shall certify on a form prescribed by the system that the member's employment has been terminated.

(2) The member has retired for service under the Defined Benefit Program pursuant to Chapter 27 (commencing with Section 24201).

(b) A member shall submit an application for a retirement benefit on a form prescribed by the system.

SEC. 53. Section 25011 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25011. (a) A member may elect to receive the retirement benefit as an annuity payable in monthly installments, provided the balance of credits in the member's Defined Benefit Supplement account on the date the retirement benefit becomes payable equals at least three thousand five hundred dollars ($3,500) after any lump-sum payments have been made from the account.

(b) If the member elects to receive the retirement benefit as an annuity, the member shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the retirement benefit in a lump-sum payment. Upon the death of the member, no other benefit shall be payable to the member's beneficiary under the Defined Benefit Supplement Program.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the retirement benefit in a lump-sum payment. Upon the death of the member, an amount equal to the remaining balance, if any, of credits transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall be returned in a lump-sum payment to the member's beneficiary.

(3) A 100 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, the same monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, one-half of the monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date the retirement benefit becomes payable. The annuity shall be payable over a specified number of years, from a minimum of three years to a maximum of 10 years.

However, the annuity period shall not exceed the life expectancy of the member, or the life expectancy of the member and the member's annuity beneficiary. If the member's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the member's annuity beneficiary pursuant to Section 25022.

(c) The actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account shall reflect increases in annuity payments to be made in the future pursuant to Section 24402.

SEC. 54. Section 25012 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25012. An annuity payable under the Defined Benefit Supplement Program shall be determined as a value actuarially equivalent to the balance of credits in the member's Defined Benefit Supplement account on the date the benefit becomes payable and after any lump-sum payment. If a single life annuity is elected, the annuity shall be calculated using the age of the member on the date the benefit becomes payable. A member may elect a single life annuity only if the member did not elect to receive a modified allowance pursuant to Section 24300. If a joint and survivor annuity is elected, the annuity shall be calculated using the age of the member and the age of the member's beneficiary on the date the benefit becomes payable. A member may elect a joint and survivor annuity only if the member elected to receive a modified allowance pursuant to Section 24300.

SEC. 55. Section 25014 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25014. (a) If a member reinstates from service retirement under this part, payment of a retirement annuity based on the balance of credits that was transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall terminate. The member's Defined Benefit Supplement account shall be credited with the actuarial equivalent of the member's annuity as of the date the annuity is terminated and the Annuitant Reserve shall be reduced by the amount credited to the member's account.

(b) If the member subsequently retires again, an annuity based on the remaining balance of credits in the member's Defined Benefit Supplement account at the time of the subsequent retirement shall become payable pursuant to Section 24202.5 and the balance of credits in the member's Defined Benefit Supplement account shall be transferred to the Annuitant Reserve.

SEC. 56. Section 25015 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25015. (a) If a member elects to receive a benefit payable under the Defined Benefit Supplement Program as a joint and survivor annuity, the designation of the beneficiary made pursuant to Section 24300 shall

apply to the benefit payable under this chapter. The annuity beneficiary designation shall not be changed after the date the benefit becomes payable to the member, except as provided in Chapter 12 (commencing with Section 22650).

(b) If the member designates multiple annuity beneficiaries in the designation of beneficiary made pursuant to Section 24300, the percentage of the annuity payable to each annuity beneficiary upon the death of the member specified in that designation shall apply to the benefit payable under this chapter. The annuity amount payable to the member during his or her lifetime shall be modified to be payable over the combined lives of the member and the annuity beneficiary or beneficiaries.

(c) If the member predeceases an annuity beneficiary, the annuity beneficiary may designate a payee to receive an amount that may be payable in a lump-sum pursuant to Section 25023 upon the death of the annuity beneficiary.

SEC. 57. Section 25016 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25016. (a) A member's disability benefit under the Defined Benefit Supplement Program shall be an amount equal to the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable.

(b) A disability benefit shall be a lump-sum payment, or an annuity payable in monthly installments, or a combination of both a lump-sum payment and an annuity, as elected by the member on the application for a disability benefit. Any retirement benefit paid as an annuity under this chapter shall be subject to Section 25018.

(c) Upon distribution of the entire disability benefit in a lump-sum payment, no other benefit shall be payable to the member or the member's beneficiary under the Defined Benefit Supplement Program.

SEC. 58. Section 25017 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25017. (a) A member who meets the following eligibility requirements shall receive a disability benefit under the Defined Benefit Supplement Program:

(1) The member has terminated all employment to perform creditable service subject to coverage by the plan. The member's employer, or employers if the member has multiple employers, shall certify on a form prescribed by the system that the member's employment has been terminated.

(2) The member has been approved to receive a disability allowance pursuant to Chapter 25 (commencing with Section 24001) or a disability retirement allowance pursuant to Chapter 26 (commencing with Section 24100) under the Defined Benefit Program.

(b) The member, or the member's employer or conservator on behalf of the member, shall submit an application for a disability benefit on a form prescribed by the system.

SEC. 59. Section 25018 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25018. (a) A member may elect to receive the disability benefit as an annuity, payable in monthly installments, provided the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable equals at least three thousand five hundred dollars ($3,500) after any lump-sum payment has been made from this account.

(b) If the member elects to receive the disability benefit as an annuity, the member shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the disability benefit in a lump-sum payment. Upon the death of the member, no other benefit shall be payable to the member's beneficiary under the Defined Benefit Supplement Program.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the disability benefit in a lump-sum payment. Upon the death of the member, an amount equal to the remaining balance of credits, if any, transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall be returned in a lump-sum payment to the member's beneficiary.

(3) A 100 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, the same monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, one-half of the monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary

predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable. The annuity shall be payable over a specified number of years, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the member, or the life expectancy of the member and the member's annuity beneficiary. If the member's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the member's annuity beneficiary pursuant to Section 25022.

(c) The actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account shall reflect increases in annuity payments to be made in the future pursuant to Section 24402, unless the member elected a period certain annuity.

SEC. 60. Section 25019 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25019. (a) If a member's disability allowance or disability retirement allowance under this part is terminated, payment of a disability annuity based on the balance of credits transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve also shall terminate. The member's Defined Benefit Supplement account shall be credited with the actuarial equivalent of the member's annuity as of the date the annuity is terminated and the Annuitant Reserve shall be reduced by the amount credited to the member's account.

(b) If a disability allowance or a service or disability retirement allowance subsequently becomes payable again, an annuity based on the remaining balance of credits in the member's Defined Benefit Supplement account at the time of the subsequent disability or service or disability retirement becomes payable and the balance of credits in the member's Defined Benefit Supplement account shall be transferred to the Annuitant Reserve.

SEC. 61. Section 25020 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25020. (a) A final benefit under the Defined Benefit Supplement Program shall become payable when the system receives proof of the member's death.

(b) If the member's death occurs before an annuity under the Defined Benefit Supplement Program becomes payable, the final benefit shall be an amount equal to the balance of credits in the member's Defined Benefit Supplement account on the date of the member's death.

(c) Upon distribution of a final benefit in a lump-sum payment, no other benefit shall be payable under the Defined Benefit Supplement Program to the member's beneficiary.

SEC. 62. Section 25021 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25021. (a) A beneficiary, other than an entity, may elect to receive the final benefit payable under the Defined Benefit Supplement Program as an annuity payable in monthly installments provided the balance of credits in the member's Defined Benefit Supplement account equals at least three thousand five hundred dollars ($3,500).

(b) A beneficiary who elects to receive an annuity shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the beneficiary if the beneficiary elected to receive the final benefit in a lump-sum payment. The annuity shall cease to be payable upon the death of the beneficiary, and no other benefit shall be payable under the Defined Benefit Supplement Program because of the death of the member and the member's beneficiary.

(2) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date of the member's death. The annuity shall be payable over a specified number of years, from a minimum of three years to a maximum of 10 years, but not to exceed the life expectancy of the beneficiary. The beneficiary may designate a payee to receive the remaining balance of payments if the beneficiary's death occurs prior to the end of the period certain.

(c) The actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account shall reflect increases in annuity payments to be made in the future pursuant to Section 24402, unless the member elected a period certain annuity.

SEC. 63. Section 25023 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25023. (a) Upon the death of an annuity beneficiary who was receiving an annuity under a joint and survivor annuity elected by the member no further payment shall be made.

(b) Upon the death of a beneficiary who was receiving a single life annuity without a cash refund feature, no further payment shall be made.

(c) Upon the death of a beneficiary who was receiving a period certain annuity, the actuarial equivalent of the remaining balance of payments

shall be paid in a lump sum to the payee designated by the beneficiary pursuant to subdivision (c) of Section 25015.

SEC. 64. Section 25024 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25024. (a) Upon the termination of all employment to perform creditable service subject to coverage under the plan for a reason other than retirement, disability, or death, a member shall be eligible for a termination benefit under the Defined Benefit Supplement Program. The member's employer, or employers if the member has multiple employers, shall certify on a form prescribed by the system that the member's employment has been terminated.

(b) A member shall submit an application for a termination benefit on a form prescribed by the system. If a member submits an application for a refund of contributions under the Defined Benefit Program, pursuant to Section 23103, that application shall also be deemed an application for a termination benefit.

(c) The termination benefit shall be a lump-sum payment that is equal to the balance of credits in the member's Defined Benefit Supplement account.

(d) Upon distribution of the termination benefit, no further benefit shall be payable to the member or the member's beneficiary under the Defined Benefit Supplement Program.

(e) A partial distribution of the balance of credits in a member's Defined Benefit Supplement account shall not be made, except as provided in Section 25009, 25015, 25016, or 25022.

SEC. 65. Section 19.5 of this bill incorporates amendments to Section 22652 of the Education Code proposed by both this bill and AB 820. 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 22652 of the Education Code, and (3) this bill is enacted after AB 820, in which case Section 19 of this bill shall not become operative.

SEC. 66. Section 25.5 of this bill incorporates amendments to Section 22662 of the Education Code proposed by both this bill and AB 820. 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 22662 of the Education Code, and (3) this bill is enacted after AB 820, in which case Section 25 of this bill shall not become operative.

SEC. 67. The sum of $600,000 is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board for the administrative costs of implementing the provisions of Chapter 74 of the Statutes of 2000, as amended by this act.

SEC. 68. The unexpended balance of funds appropriated to the Teachers' Retirement Board in Chapter 632 of the Statutes of 1999 for the payment of administrative costs of implementing the provisions of

that act, is hereby reappropriated to the board for the payment of administrative costs of implementing the provisions of legislation enacted during the second year of the 1999–2000 Session of the Legislature affecting the State Teachers' Retirement System.

SEC. 69. The provisions of this act, other than Sections 3, 4, 8, 13, 27, 30, 31, 34, 35, 36, 37, and 68, shall become operative only if Chapter 74 of the Statutes of 2000 becomes effective on or before January 1, 2001.

SEC. 70. The Teachers' Retirement Board shall promptly notify the Secretary of State if and when the condition specified in Sections 3, 4, 5, 27, 30, and 31 of this act has been satisfied to cause those sections to become operative on July 1, 2002.

SEC. 71. The Teachers' Retirement Board shall promptly notify the Secretary of State if and when the condition specified in Sections 34, 35, 36, and 37 of this act has been satisfied to cause those sections to become operative on July 1, 2003.

CHAPTER 1022

An act to add and repeal Article 1.5 (commencing with Section 48005.10) of Chapter 1 of Part 27 of the Education Code, relating to public school enrollment, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Article 1.5 (commencing with Section 48005.10) is added to Chapter 1 of Part 27 of the Education Code, to read:

Article 1.5. Kindergarten Readiness Pilot Program

48005.10. (a) This article shall be known, and may be cited, as the Kindergarten Readiness Pilot Program.

(b) The Legislature hereby finds and declares the following:

(1) The available data indicate all of the following:

(A) By changing the age at which children generally enter kindergarten, California's children will be better prepared to enter into the academic environment that is required by the California content standards for kindergarten.

(B) Success in school is often related to socioeconomic status, English language fluency at school entry, and access to preschool. By

providing a kindergarten readiness program for the children most at risk for low performance and delaying entry to allow all children time to become more developmentally ready to learn, pupils are more likely to succeed in school.

(C) Comparisons between California pupils and pupils in other states on national achievement tests in the later grades are likely to be more equitable if the entry age of California pupils is more closely aligned to that of most other states.

(D) Children who have attended an educationally based kindergarten readiness program, including, but not limited to, a quality state preschool, Head Start, or kindergarten readiness program, are better prepared academically and socially for the existing kindergarten curriculum, as reflected by the state adopted standards.

(2) The purpose of the pilot project established pursuant to this article is intended to test these data.

(3) For participating school districts, the change in enrollment required pursuant to this article will result in a decrease in the number of pupils enrolled in kindergarten classes for the class entering kindergarten in the 2001–02 school year. The decreased enrollment will affect the class size in each subsequent grade level over the 13-year period that it would normally take the class to complete its elementary and high school education. Thus, it is estimated that in participating school districts there will be a 25 percent decrease in the enrollment of the kindergarten class in the initial year of implementation that will affect the subsequent grade levels of the high school graduating class of the 2013–14 school year.

(4) The decrease in enrollment permitted pursuant to this article will necessarily decrease the number of units of average daily attendance that a participating school district may claim for the purpose of computing the amount of state revenue limit aid that a school district may receive, thereby reducing the amount of state aid that school districts receive for revenue limit purposes. Due to the definition of ''changes in enrollment'' in Section 14022.7, that decrease will also affect the computation of the state's minimum funding obligation to school districts and community college districts under paragraphs (2) and (3) of Section 8 of Article XVI of the California Constitution, which requires adjustments to be made to that computation for changes in enrollment.

(5) The school district revenue related provisions of this article, including, but not limited to, funding provided pursuant to subdivisions (a) and (b) of Section 48005.30, future funding described in subdivision (c) of Section 48005.30, and adjustments to average daily attendance calculations as set forth in Section 48005.40, are intended to fully

compensate participating school districts for this resultant funding reduction.

48005.13. (a) The Superintendent of Public Instruction shall establish and administer the Kindergarten Readiness Pilot Program to permit school districts to provide opportunities for children to enhance their readiness for kindergarten, thereby increasing their likelihood for future academic success.

(b) The Superintendent of Public Instruction shall convene an advisory panel to assist the department in developing its request for proposals, and in evaluating and selecting the proposals submitted to the department. The advisory panel shall include, but need not be limited to, a representative of each of the following:

(1) The Department of Finance.

(2) The Legislature.

(3) The California Research Bureau.

(4) The Legislative Analyst.

(5) The State Board of Education.

(6) The Secretary for Education.

(c) By February 1, 2001, the superintendent shall notify elementary and unified school districts maintaining kindergarten about the existence of this program, shall notify them about the procedures for participation, and shall request proposals for participation.

(d) Participation in the program by a school district shall be voluntary.

(e) A school district that elects to participate in the program shall apply to the Superintendent of Public Instruction by May 1, 2001, upon forms adopted by the superintendent for this purpose.

(f) The Superintendent of Public Instruction, with the advice of the advisory panel, and in consultation with the Secretary for Education, shall select participants from the group of applicants. The Superintendent of Public Instruction shall give priority to applicant school districts that are representative of the diversity of pupils and of the various types of school districts within the state. Priority shall, also, be given to unified school districts.

48005.15. By July 1, 2001, each participant school district shall enter into an agreement with the Superintendent of Public Instruction setting forth the requirements under the program, including, but not limited to, all of the following:

(a) The participating school district shall make reasonable efforts to identify parents and guardians of children from three to five years of age who reside within the school district and to provide the parents and guardians with information regarding, and access to, services, programs, or methods, to assist them in assessing the level of readiness of a child to enter school.

(b) The effort set forth in paragraph (1) shall include, but need not be limited to, information regarding available care services, preschool programs, and educationally based kindergarten readiness programs. The school district may coordinate this effort with local parent-teacher organizations.

(c) ''Reasonable effort'' as used in this subdivision does not require that the school district individually contact every potential parent who resides within the school district.

(d) The school district shall provide assistance to parents or guardians who request assistance regarding activities that parents may initiate in preparing children for school.

(e) At a minimum, participating school districts shall supply parents or guardians with written readiness guidelines developed by the State Department of Education.

(f) Assistance provided pursuant to this section shall be based on generally accepted child development theory and may include information related to social and development readiness and professional consultations with teachers and school administrators.

(g) The participating school district shall make reasonable efforts to collect data and make it available to the independent evaluator, as specified in Section 48005.45.

48005.20. (a) Participating school districts shall offer enrollment in a kindergarten readiness program to eligible children in order to receive funding pursuant to this article. Participation by parents and children in a kindergarten readiness program shall be voluntary.

(b) The school district shall offer a kindergarten readiness program to any eligible child who preenrolls in kindergarten, and may offer it to eligible children who do not preenroll.

(c) For purposes of this article, an eligible child is any child in the school district who will become eligible to enter kindergarten in the following year pursuant to Section 48005.25.

(d) Priority for enrollment in a kindergarten readiness program shall be provided to any child who has not previously attended a public or private preschool program.

(e) The kindergarten readiness program offered by a school district pursuant to this section shall consist solely of components designed to enhance the skills that are necessary for success in later education and shall include, but need not be limited to, all of the following:

(1) At least 110 hours of kindergarten readiness activities and instruction.

(2) Programs that assist pupils in developing the motor and cognitive skills, including, but not limited to language development, required to be successful in kindergarten.

(3) Activities that socialize pupils to the discipline of the school environment.

45005.25. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 48000, for the 2001–02 school year, and each school year thereafter in which a school district continues to participate in the program, the school district shall offer admission to kindergarten at the beginning of the school year, or at a later time in the same school year, only to children who will have their fifth birthday on or before September 1 of that school year.

(b) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 48010, for the 2001–02 school year, and each school year thereafter in which a school district continues to participate in the program, a school district shall offer admission to first grade at the beginning of the school year, or at a later time in the same school year, only to children who will have their sixth birthday on or before September 1 of that school year. Kindergarten shall not be a prerequisite for enrollment in first grade pursuant to this article.

(c) Notwithstanding subdivisions (a) and (b), the governing board of each school district participating in this program shall adopt a policy to allow, for good cause, admission of a child to kindergarten or to the first grade at the beginning of a school year in which the child's birthday will be after September 1, or at a later time in the same school year.

45005.30. (a) For the 2001–02 school year the Superintendent of Public Instruction shall allocate a grant of funds for a participating school district as follows:

(1) A grant provided for each year of participation to cover the costs of developing and operating the school district kindergarten readiness program, including, but not limited to, the costs of administration and the costs associated with services provided to parents and children in the program. For any participating school district, annual funding pursuant to this paragraph shall not exceed the per-pupil amounts set forth in subparagraphs (A) or (B) multiplied by a number equal to 50 percent of the entire annual kindergarten enrollment of the school district:

(A) Five hundred dollars ($500) for every child participating in the kindergarten readiness program for 110 hours.

(B) Seven hundred fifty dollars ($750) for every child participating in the kindergarten readiness program for 150 or more hours.

(2) Funding necessary to fully mitigate the financial impact upon the school district of the reduced attendance that results from the program, to be determined as follows:

(A) Multiply one-fourth of the kindergarten average daily attendance for the 2000–01 school year by the school district's base revenue limit per unit of average daily attendance.

(B) From the 2000–01 school year funded average daily attendance subtract the 2001–02 school year funded average daily attendance for the participating school district's base revenue limit. If the difference is zero or less, the result of this calculation shall be zero. If the difference is greater than zero, multiply the difference by the district's base revenue limit per unit of average daily attendance.

(C) From the product of subparagraph (A) subtract the result of subparagraph (B). If the result of subparagraph (B) is greater than the product of subparagraph (A), then this calculation shall be zero.

(b) For the 2002–03 school year, and each school year thereafter in which the school district participates in the program up to and including the 2007–08 school year, the Superintendent of Public Instruction shall allocate a grant of funds for a participating school district as follows:

(1) A grant provided for each year of participation to cover the costs of developing and operating the school district kindergarten readiness program, including, but not limited to, the costs of administration and the costs associated with services provided to parents and children in the program. For any participating school district, annual funding pursuant to this paragraph shall not exceed the per-pupil amounts set forth in subparagraph (A) or (B) multiplied by a number equal to 50 percent of the entire annual kindergarten enrollment of the school district:

(A) Five hundred dollars ($500) for every child participating in the kindergarten readiness program for 110 hours.

(B) Seven hundred fifty dollars ($750) for every child participating in the kindergarten readiness program for 150 or more hours.

(2) Funding necessary to fully mitigate the financial impact upon the school district of the reduced attendance that results from the program to be calculated by multiplying one-fourth of the kindergarten average daily attendance for the 2000–01 school year, by the school district's base revenue limit per unit of average daily attendance, adjusted annually for cost of living as provided generally for school district base revenue limits.

(c) In addition to providing funding for costs associated with current annual operation of the program as set forth in subdivisions (a) and (b), it is the intent of the Legislature to establish a mechanism to provide sufficient funding in future years to ensure that participant school districts are annually provided funding to fully mitigate any ongoing financial consequences from reduced enrollment due to participation in the program for every school year up to and including the 2013–14 school year.

(d) (1) Total annual funding for mitigation of lost revenues due to reduced enrollment provided pursuant to this article shall be subject to a statewide annual maximum funding level equal to the equivalent of 2,300 full annual units of average daily attendance.

(2) It is the intent of the Legislature that the annual funding mechanism to be provided for subsequent school years as described in subdivision (c) be subject to a similar maximum statewide level of funding as set forth in paragraph (1).

48005.33. The State Allocation Board shall adopt regulations to ensure that school districts are not adversely affected with regard to access to state funding for school facilities pursuant to the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10) due to loss of enrollment based upon participation in this program.

48005.35. (a) A school district kindergarten readiness program operated pursuant to this article is exempt from Chapter 14 (commencing with Section 15000) and Chapter 19 (commencing with Section 17906) of Division 1 of Title 5 of the California Code of Regulations if the program meets kindergarten staffing and safety requirements.

(b) Notwithstanding any other provision of law to the contrary, including, but not limited to, subdivision (a) of Section 17285, a commercial building that does not meet the requirements of Section 17820, that is leased to a school district may, until January 1, 2003, be used as a classroom in order to accommodate programs under this article if the governing board of the school district finds that conditions of subdivision (b) of Section 17285 have been met.

(c) Any teacher participating in the kindergarten readiness program shall be a holder of a permit or credential issued by the Commission on Teacher Credentialing that authorizes instruction in kindergarten or child care and development.

48005.40. (a) Notwithstanding any other provision of law, in calculating "changes in enrollment" for purposes of paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, average daily attendance for participating school districts so that for the computation of the change between the 2000–01 and 2001–02 fiscal years, the 2001–02 average daily attendance shall be calculated with each unit of participating kindergarten attendance counting as one and one-third of one unit of average daily attendance.

(b) The Legislature finds and declares that subdivision (a) of this section is consistent with subdivision (f) of Section 8 of Article XVI of the California Constitution and is required by subdivision (d) of Section 41204, in order to neutralize the effect of the impact that the change of the age that a participating pupil may enter kindergarten pursuant to this article will have on the average daily attendance used for the purpose of calculating changes in enrollment pursuant to paragraphs (2) and (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

48005.45. (a) The Superintendent of Public Instruction shall, by June 1, 2002, contract for an independent longitudinal evaluation regarding the effects of the change in the entry age for kindergarten and first grade pursuant to this article. In selecting the independent evaluator, awarding the contract pursuant to this section, and in monitoring performance under the contract, the Superintendent of Public Instruction shall consult with the advisory panel convened pursuant to subdivision (b) of Section 48005.13.

(b) The evaluation shall be based upon samples of sufficient size and diversity to allow results to be reported separately for pupils of different ethnicity, socioeconomic status, and primary language, and results of the evaluation shall be so reported.

(c) The primary purpose of the evaluation is to determine whether this entry age change results in improved readiness for school and an improvement in academic achievement among participating children.

(d) The evaluation shall use representative sampling to identify the change's effects on all of the following:

(1) Academic achievement, as measured by standardized tests, as compared with pupils not participating in the program.

(2) Behavioral problems, as measured by objective data including, but not limited to, suspension and expulsion rates, as compared with pupils not participating in the program.

(3) Academic problems, as measured by referrals to special education and remedial programs, as compared with pupils not participating in the program.

(4) Age of kindergarten entry and previous educationally based preschool experience, including, but not limited to, access to child care and preschool by parents or guardians.

(5) Overall retention rates in kindergarten and in subsequent grades.

(6) Participation in remedial, supplemental, or summer school programs.

(7) Class size.

(8) Number of pupils participating in kindergarten.

(9) Number of pupils participating in the kindergarten readiness programs.

(10) Differences, if any, between programs with full preschool participation, and those with partial or no preschool.

(11) Childcare difficulties caused by the admission age change.

(12) Demographic breakdown of participants and nonparticipants, including, but not limited to, socioeconomic and ethnic demographics.

(13) Facilities difficulties, if any, encountered by participating school districts.

(14) The ability of parents to gain access to the program, disaggregated by ethnic, primary language, and socioeconomic status.

(e) It is the intent of the Legislature that funding for this evaluation be included in the Budget Act or a bill related to the Budget Act. It is the intent of the Legislature to subsequently increase the number of hours funded for the kindergarten readiness program if the reports pursuant to this section indicate that the increase would be beneficial.

(f) (1) The independent evaluator shall report to the Legislature, the Governor, the Superintendent of Public Instruction, the State Board of Education, and the Secretary for Education.

(2) The initial report shall be filed by June 1, 2005. The interim report shall be filed by January 1, 2007. The final report shall be filed by January 1, 2008.

48005.50. (a) The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Office of the Superintendent of Public Instruction for a statewide public information campaign to notify school districts and parents of the availability and goals of the Kindergarten Readiness Pilot Program.

(b) The State Board of Education may adopt regulations related to the administration of the article and the distribution of funding for purposes of this article. The regulations shall preserve the flexibility of school districts to design and operate kindergarten readiness programs within the parameters established by this article.

48005.55. This article shall become inoperative on June 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 1023

An act to amend Sections 19805, 19851.5, and 19950.2 of, and to add Section 19950.3 to, and to add and repeal Section 19980 of the Business and Professions Code, and to add Section 330.11 to the Penal Code, relating to gambling establishments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) In 1983 and 1984 California card clubs played games with cards involving a player-dealer position in which players were afforded the temporary opportunity to wager against multiple players at the table

where the player-dealer position continuously and systematically rotated among the players, prior to the amendment of Section 19 of Article IV of the California Constitution by the California State Lottery Act in 1984. This method of play was approved by the Courts of Appeal in Sullivan v. Fox (1987) 189 Cal.App.3d 673, Walker v. Meehan (1987) 194 Cal.App.3d 1290, City of Bell Gardens v. County of Los Angeles (1991) 231 Cal.App.3d 1563, and Huntington Park Club Corp. v. County of Los Angeles (1988) 206 Cal.App.3d 241.

(b) The amendment to Section 19 of Article IV of the Constitution declared:

''The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.''

Casinos operating in 1983 and 1984 in the States of Nevada and New Jersey did not include card games featuring a player-dealer position which continuously and systematically rotates among the players. In Nevada and New Jersey, comparable games are banked only by the house, which is a participant in the game, with an interest in its outcome, and which covers all bets in the game, paying all winners and collecting from all losers.

(c) In Hotel Employees & Restaurant Employees v. Davis (1999) 21 Cal. 4th 585, the California Supreme Court recently stated at page 605 that:

''...(t)he type'' of casino ''operating in Nevada and New Jersey'' presumably refers to a gambling facility that did not legally operate in California; something other, that is, than ''the type'' of casino ''operating'' in California.''

SEC. 2. Section 19805 of the Business and Professions Code is amended to read:

19805. As used in this chapter, the following definitions shall apply:

(a) ''Affiliate'' means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a specified person.

(b) ''Applicant'' means any person who has applied for, or is about to apply for, a state gambling license, a key employee license, a registration, a finding of suitability, a work permit, a manufacturer's or distributor's license, or an approval of any act or transaction for which the approval or authorization of the commission or division is required or permitted under this chapter.

(c) ''Banking game'' or ''banked game,'' as used in this chapter and in Section 330 of the Penal Code, refers to a game in which the house, a player, or other entity is a participant in the game, taking on all comers,

paying all winners, and collecting from all losers. The bank is actually involved in the play, and serves as the ultimate source and repository of funds, dwarfing that of all other participants in the game. ''Banking game'' or ''banked game'' does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

(d) ''Board'' means the California Gambling Control Board.

(e) ''Commission'' means the California Gambling Control Commission.

(f) ''Controlled gambling'' means to deal, operate, carry on, conduct, maintain, or expose for play any controlled game.

(g) ''Controlled game'' means any controlled game, as defined by subdivision (e) of Section 337j of the Penal Code.

(h) ''Director,'' when used in connection with a corporation, means any director of a corporation or any person performing similar functions with respect to any organization. In any other case, ''director'' means the Director of the Division of Gambling Control.

(i) ''Division'' means the Division of Gambling Control in the Department of Justice.

(j) ''Finding of suitability'' means a finding that a person meets the qualification criteria described in subdivisions (a) and (b) of Section 19848, and that the person would not be disqualified from holding a state gambling license on any of the grounds specified in subdivision (a) of Section 19850.

(k) ''Game'' and ''gambling game'' means any controlled game.

(*l*) ''Gambling'' means to deal, operate, carry on, conduct, maintain, or expose for play any controlled game.

(m) ''Gambling enterprise employee'' means any natural person employed in the operation of a gambling enterprise, including, without limitation, dealers, floormen, security employees, countroom personnel, cage personnel, collection personnel, surveillance personnel, data processing personnel, appropriate maintenance personnel, waiters and waitresses, and secretaries, or any other natural person whose employment duties require or authorize access to restricted gambling establishment areas.

(n) ''Gambling establishment,'' ''establishment,'' or ''licensed premises'' means one or more rooms where any controlled gambling or activity directly related thereto occurs.

(o) ''Gambling license'' or ''state gambling license'' means any license issued by the state that authorizes the person named therein to conduct a gambling operation.

(p) ''Gambling operation'' means exposing for play one or more controlled games that are dealt, operated, carried on, conducted, or maintained for commercial gain.

(q) ''Gross revenue'' means the total of all compensation received for conducting any controlled game, and includes interest received in payment for credit extended by an owner licensee to a patron for purposes of gambling, except as provided by regulation.

(r) ''House'' means the gambling establishment, and any owner, shareholder, partner, key employee, or landlord thereof.

(s) ''Independent agent,'' except as provided by regulation, means any person who does either of the following:

(1) Collects debt evidenced by a credit instrument.

(2) Contracts with an owner licensee, or an affiliate thereof, to provide services consisting of arranging transportation or lodging for guests at a gambling establishment.

(t) ''Institutional investor'' means any retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees, any investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), any collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, any closed-end investment trust, any chartered or licensed life insurance company or property and casualty insurance company, any banking and other chartered or licensed lending institution, any investment advisor registered under the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.) acting in that capacity, and other persons as the board may determine for reasons consistent with the policies of this chapter.

(u) ''Key employee'' means any natural person employed in the operation of a gambling enterprise in a supervisory capacity or empowered to make discretionary decisions that regulate gambling operations, including, without limitation, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees, or any other natural person designated as a key employee by the division for reasons consistent with the policies of this chapter.

(v) ''Key employee license'' means a state license authorizing the holder to be associated with a gambling enterprise as a key employee.

(w) ''Licensed gambling establishment'' means the gambling premises encompassed by a state gambling license.

(x) ''Limited partnership'' means a partnership formed by two or more persons having as members one or more general partners and one or more limited partners.

(y) ''Limited partnership interest'' means the right of a general or limited partner to any of the following:

(1) To receive from a limited partnership any of the following:

(A) A share of the revenue.

(B) Any other compensation by way of income.

(C) A return of any or all of his or her contribution to capital of the limited partnership.

(2) To exercise any of the rights provided under state law.

(z) ''Owner licensee'' means an owner of a gambling enterprise who holds a state gambling license.

(aa) ''Person,'' unless otherwise indicated, includes a natural person, corporation, partnership, limited partnership, trust, joint venture, association, or any other business organization.

(ab) ''Player'' means a patron of a gambling establishment who participates in a controlled game.

(ac) ''Player-dealer'' and ''controlled game featuring a player-dealer position'' refer to a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are afforded the temporary opportunity to wager against multiple players at the same table, provided that this position is rotated amongst the other seated players in the game.

(ad) ''Publicly traded racing association'' means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) whose stock is publicly traded.

(ae) ''Qualified racing association'' means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) that is a wholly owned subsidiary of a corporation whose stock is publicly traded.

(af) ''Work permit'' means any card, certificate, or permit issued by the division or by a county, city, or city and county, whether denominated as a work permit, registration card, or otherwise, authorizing the holder to be employed as a gambling enterprise employee or to serve as an independent agent. A document issued by any governmental authority for any employment other than gambling is not a valid work permit for the purposes of this chapter.

SEC. 3. Section 19851.5 of the Business and Professions Code is amended to read:

19851.5. Notwithstanding subdivision (i) of Section 19801, the division or commission shall not deny a license to a gambling establishment solely because it is not open to the public, provided that all of the following are true: (a) the gambling establishment is situated in a local jurisdiction that has an ordinance allowing only private clubs, and the gambling establishment was in operation as a private club under that ordinance on December 31, 1997, and met all applicable state and local gaming registration requirements; (b) the gambling establishment consists of no more than five gaming tables; (c) videotaped recordings of the entrance to the gambling room or rooms and all tables situated therein are made during all hours of operation by means of closed circuit television cameras, and these tapes are retained for a period of 30 days and are made available for review by the division or commission upon request; and (d) the gambling establishment is open to members of the private club and their spouses in accordance with membership criteria in effect as of December 31, 1997.

A gambling establishment meeting these criteria, in addition to the other requirements of this chapter, may be licensed to operate as a private club gambling establishment until November 30, 2003, or until the ownership or operation of the gambling establishment changes from the ownership or operation as of January 1, 1998, whichever occurs first. Operation of the gambling establishments after this date shall only be permitted if the local jurisdiction approves an ordinance, pursuant to Sections 19950.1 and 19950.2, authorizing the operation of gambling establishments that are open to the public. The commission shall adopt regulations implementing this section. Prior to issuing a license to a private club, the division shall ensure that the ownership of the gambling establishment has remained constant since January 1, 1998, and the operation of the gambling establishment has not been leased to any third party.

SEC. 4. Section 19950.2 of the Business and Professions Code is amended to read:

19950.2. (a) On and after the effective date of this chapter, neither the governing body nor the electors of a county, city, or city and county that has not authorized legal gaming within its boundaries prior to January 1, 1996, shall authorize legal gaming.

(b) No ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county may be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

(c) This section shall remain operative only until January 1, 2007, and as of that date is repealed.

SEC. 5. Section 19950.3 is added to the Business and Professions Code, to read:

19950.3. (a) In addition to any other limitations on the expansion of gambling imposed by Section 19950.2 or any provision of this chapter, neither the commission nor the division shall issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the division prior to September 1, 2000.

(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. 6. Section 19980 is added to the Business and Professions Code, to read:

19980. Notwithstanding any other provision of law, a licensed gambling establishment may contract with a third party for the purpose of providing proposition player services, subject to the following conditions:

(a) Any agreement, contract, or arrangement between a gambling establishment and a third-party provider of proposition player services shall be approved in advance by the division, and in no event shall a gambling establishment or the house have any interest, whether direct or indirect, in funds wagered, lost, or won.

(b) The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services to gambling establishments pursuant to this section, including owners, supervisors, and players. Those employed by a third-party provider of proposition player services, including owners, supervisors, observers, and players, shall wear a badge which clearly identifies them as proposition players whenever they are present within a gambling establishment. The commission may impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling in this state, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight.

(c) The division, pursuant to regulations of the commission, is empowered to perform background checks, financial audits, and other investigatory services as needed to assist the commission in regulating third party providers of proposition player services, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight. The division shall adopt emergency regulations in order to implement this section in an expeditious manner.

(d) No agreement or contract between a licensed gambling establishment and a third party concerning the provision of proposition player services shall be invalidated or prohibited by the division

pursuant to this section until the commission establishes criteria for, and makes determinations regarding the licensure or registration of, the provision of these services pursuant to subdivision (b).

SEC. 7. Section 330.11 is added to the Penal Code, to read:

330.11. ''Banking game'' or ''banked game,'' as those terms are used in Section 330 and in the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code), refers to a game in which the house, a player, or other entity is a participant in the game, taking on all comers, paying all winners, and collecting from all losers. The bank is actually involved in the play, and serves as the ultimate source and repository of funds, dwarfing that of all other participants in the game. ''Banking game'' or ''banked game'' does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

SEC. 8. The provisions of this act are severable. If any provision of this act, or the application thereof, is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reduce confusion and to ensure at the earliest possible time that gambling establishments are able to operate within the law with respect to controlled games featuring a player dealer position, to provide the California Gambling Control Commmission and Division of

Gambling Control with necessary regulatory guidelines and enforcement powers, and to impose reasonable limits on the further expansion of gambling, it is necessary that this act take effect immediately.

CHAPTER 1024

An act to add Section 51224.5 to the Education Code, relating to algebra.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 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) Too many of California's high school graduates are graduating without the necessary mathematical foundation to succeed in the workforce and in postsecondary education.

(b) Research and findings demonstrate the importance of algebra as a building block for advanced mathematics, a predictor of success in college, and as a key ingredient for everyday problem solving.

(c) Based upon the direction of the Governor in November of 1999, the State Board of Education, the Secretary for Education, and the Superintendent of Public Instruction, the content standards of Algebra I as adopted by the State Board of Education will be included in the 2003–04 high school exit examination.

(d) If pupils are expected to be successful on the high school exit examination, they must be given a reasonable opportunity to learn the subjects upon which they will be tested, especially because a pupil's graduation from high school is contingent upon passing the examination. This standard has been affirmed in federal case law as a threshold requirement for a high stakes examination like the high school exit examination. In the case of Debra P. v. Turlington (M.D.Fla. 1984) 546 F.Supp. 177, 186, aff'd, (11th Cir. 1984) 730 F.2d 1405, the district court stated that a competency exam was instructionally valid because ''students are afforded an adequate opportunity to learn the skill tested....''

(e) By requiring that a course in Algebra I that meets or exceeds the state content standards be included in the adopted course of study and taken by every high school pupil as a requirement of graduation, the state

can ensure that high school pupils are given the opportunity to learn as required by law.

(f) An understanding of algebra will provide the mathematical foundation necessary to pass the high school exit examination and succeed in both the workforce and in postsecondary education.

SEC. 2. Section 51224.5 is added to the Education Code, to read:

51224.5. (a) The adopted course of study for grades 7 to 12, inclusive, shall include algebra as part of the mathematics area of study pursuant to subdivision (f) of Section 51220.

(b) Commencing with the 2003–04 school year and each year thereafter, at least one course, or a combination of the two courses in mathematics required to be completed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 by pupils while in grades 9 to 12, inclusive, prior to receiving a diploma of graduation from high school, shall meet or exceed the rigor of the content standards for Algebra I, as adopted by the State Board of Education pursuant to Section 60605.

(c) If at any time, in any of grades 7 to 12, inclusive, or in any combination of those grades, a pupil completes coursework that meets or exceeds the academic content standards for Algebra I pursuant to subdivision (b) in less than two courses, subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 shall be deemed to have been satisfied and the pupil shall not be required to take additional coursework in mathematics.

SEC. 3. It is the intent of the Legislature that any modification to coursework required by this act shall result in neither additional classes nor in additional costs, but that any modification to coursework shall be incorporated into the requirements of paragraph (2) of subdivision (a) of Section 51225.3 of the Education Code.

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 1025

An act to amend Sections 22106, 22128, 22138.5, 22141, 22146, 22147.5, 22148, 22149, 22151, 22156, 22156.1, 22160, 22163, 22165,

22307, 22402, 22500, 22508, 22701, 22713, 22900, 22951, 22956, 23001, 23008, 23102, 23800, 23850, 24201, 24209, 24211, 24307, 24410.5, 24415, 24417, 26104, 44922, and 47611 of, and to repeal and add Section 23300 to, the Education Code, relating to state teachers' retirement.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 22106 of the Education Code is amended to read:

22106. ''Annuity deposit contributions'' means additional contributions made by a member prior to July 1, 1972, above those required for credited service for the purpose of providing additional retirement income.

SEC. 2. Section 22128 of the Education Code is amended to read:

22128. ''Early retirement'' and ''early retirement age'' mean the age of 55 years, which is the age upon attainment of which the member becomes eligible under the Defined Benefit Program for a service retirement allowance with reduction because of age and without special qualifications.

SEC. 3. Section 22138.5 of the Education Code is amended to read:

22138.5. (a) ''Full time'' means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, ''full time'' shall not be less than the minimum standards specified in this section.

(b) The minimum standard for full time in kindergarten through grade 12 shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2) and (3).

(2) (A) One hundred ninety days per year or 1,520 hours per year for all principals and program managers, including advisers, coordinators, consultants, and developers or planners of curricula, instructional materials, or programs, and for administrators, except as provided in subparagraph (B).

(B) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

(c) The minimum standard for full time in community colleges shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full-time assignment for a particular class of employees.

(2) One hundred ninety days per year or 1,520 hours per year for all program managers and for administrators, except as provided in paragraph (3).

(3) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per school year for all instructors employed on a part-time basis, except instructors specified in paragraph (6). If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per school year for all instructors employed in adult education programs. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) The board shall have final authority to determine full time for purposes of crediting service under this part if full time is not otherwise specified herein.

SEC. 4. Section 22141 of the Education Code is amended to read:

22141. Notwithstanding Section 22140, ''improvement factor'' means an increase of 2 percent in benefits provided under Sections 24408 and 24409 for each year commencing on September 1, 1981, and under Section 24410.5 for each year commencing September 1, 2002. The factor shall not be compounded nor shall it be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions. The Legislature reserves the right to adjust the amount of the improvement factor up or down as the economic conditions dictate. No adjustments of the improvement factor shall reduce the monthly retirement allowance or

benefit below that which would be payable to the recipient under this part had this section not been enacted.

SEC. 5. Section 22146 of the Education Code is amended to read:

22146. ''Member'' means any person, unless excluded under other provisions of this part, who has performed creditable service as defined in Section 22119.5 and has earned creditable compensation for that service and has not received a refund for that service and, as a result, is subject to the Defined Benefit Program. A member's rights and obligations under this part with respect to the Defined Benefit Program shall be determined by the applicability of subdivision (a), (b), (c), or (d), and subject to any applicable exceptions under other provisions of this part.

(a) An active member is a member who is not retired or disabled and who earns creditable compensation during the school year.

(b) An inactive member is a member who is not retired or disabled and who has not earned creditable compensation during the school year immediately prior to and the school year during which the member retires for service.

(c) A disabled member is a member to whom a disability allowance is payable under Chapter 25 (commencing with Section 24001).

(d) A retired member is a member who has terminated employment and has retired for service under the provisions of Chapter 27 (commencing with Section 24201), or has retired for disability under the provisions of Chapter 26 (commencing with Section 24100) or retired for service or disability under the provisions of Chapter 21 (commencing with Section 23400), and to whom a retirement allowance is therefore payable.

SEC. 6. Section 22147.5 of the Education Code is amended to read:

22147.5. ''Nonqualified service'' means any time during which a member did not perform creditable service subject to coverage by the plan. Nonqualified service shall not include time for which the member is eligible to purchase credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820), or Chapter 14.5 (commencing with Section 22850).

SEC. 7. Section 22148 of the Education Code is amended to read:

22148. ''Normal retirement'' and ''normal retirement age'' mean the age of 60 years, which is the age upon attainment of which the member becomes eligible under the Defined Benefit Program for a service retirement allowance without reduction because of age and without special qualifications.

SEC. 8. Section 22149 of the Education Code is amended to read:

22149. ''Option beneficiary'' means the person designated by a member to receive a retirement allowance under the Defined Benefit Program upon the member's death.

SEC. 9. Section 22151 of the Education Code is amended to read:

22151. ''Overtime'' means the aggregate creditable service in excess of one year (1.000) of creditable service that is performed by a person in a school year.

SEC. 10. Section 22156 of the Education Code is amended to read:

22156. ''Plan vesting,'' with respect to benefits payable under the Defined Benefit Program, means the member has met the credited service requirement for receipt of a benefit, and has a right to receive the benefit at a future date provided all other conditions required to receive the benefit are also met.

SEC. 11. Section 22156.1 of the Education Code is amended to read:

22156.1. ''Present value,'' for purposes of Section 22718, means the amount of money needed on the effective date of retirement to reimburse the system for the actuarially determined cost of the portion of a member's retirement allowance attributable to unused excess sick leave days. The present value on the effective date of retirement shall equal the number of unused excess sick leave days divided by the number of base days, multiplied by the prior year's compensation earnable multiplied by the present value factor.

SEC. 12. Section 22160 of the Education Code is amended to read:

22160. ''Provisional vesting'' means the member has reached the minimum age requirement and has attained the credited service required under the Defined Benefit Program for eligibility to receive a retirement allowance, and the member is entitled to terminate employment and retire at any time to receive a retirement allowance.

SEC. 13. Section 22163 of the Education Code is amended to read:

22163. ''Reinstatement'' means the change in status with respect to the Defined Benefit Program under this part from a disabled or retired member to an active or inactive member and termination of one of the following:

(a) A service retirement allowance pursuant to Section 24208.

(b) A disability retirement allowance pursuant to Section 24117.

(c) A disability allowance pursuant to Section 24004, 24006, or 24015.

(d) A service retirement allowance or disability retirement allowance pursuant to Section 23404.

SEC. 14. Section 22165 of the Education Code is amended to read:

22165. ''Retirement'' means termination of employment subject to coverage by the plan and a change in status from an inactive member, an active member, or a disabled member to a retired member.

SEC. 15. Section 22307 of the Education Code is amended to read:

22307. (a) The board may authorize the transfer and disbursement of funds from the retirement fund for the purpose of carrying into effect

this part and Part 14 (commencing with Section 26000). That action shall require signatures of either the board chairperson and vice chairperson, or the signatures of the board chairperson or vice chairperson and the chief executive officer or any employee of the system designated by the chief executive officer.

(b) Notwithstanding Section 13340 of the Government Code, the board may disburse funds for benefits payable under this part and Part 14 (commencing with Section 26000), for the payment of refunds and for investment transactions. Funds for these purposes shall not require appropriation by the annual Budget Act.

(c) Funds for the payment of administrative expenses are not continuously appropriated, and funds for that purpose shall be appropriated by the annual Budget Act.

SEC. 16. Section 22402 of the Education Code is amended to read:

22402. Earned interest on plan assets with respect to the Defined Benefit Program that is not credited to member accounts under the Defined Benefit Program and the plan's other income with respect to the Defined Benefit Program shall be allocated to provide benefits payable under the Defined Benefit Program.

SEC. 17. Section 22500 of the Education Code is amended to read:

22500. All persons who were members of the California State Teachers' Retirement System on June 30, 1996, are members of the Defined Benefit Program under the plan, in accordance with Section 401(a) of the Internal Revenue Code of 1986, as amended.

SEC. 18. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district, community college district, or a county superintendent to perform service that requires membership in a different public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) A member of the Public Employees' Retirement System who is employed by a school district, community college district, or a county superintendent and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of this plan may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program, if the employer offers coverage by the Public Employees' Retirement System. The election shall be made in writing

on a form prescribed by this system within 60 days from the date of hire to perform creditable service. If that election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

(c) An election made by a member pursuant to this section shall be irrevocable.

SEC. 19. Section 22701 of the Education Code is amended to read:

22701. (a) Service performed prior to July 1, 1972, shall be credited according to the provisions of law in effect at the time service was performed.

(b) Creditable service performed on or after July 1, 1972, and credited under the Defined Benefit Program, shall be credited in the proportion that the member's creditable compensation for that service bears to the member's compensation earnable.

SEC. 20. Section 22713 of the Education Code is amended to read:

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow an employee who is a member of the Defined Benefit Program to reduce his or her workload from full time to part time, and receive the service credit the member would have received if the member had been employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but shall not be limited to, the following:

(1) The option to reduce the member's workload shall be exercised at the request of the member and can be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed full time to perform creditable service subject to coverage under the Defined Benefit Program for at least 10 years including five years of full-time employment immediately preceding the reduction in workload.

(3) The member shall not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The reduced workload shall be performed for a period of time, as specified in the regulations, up to and including 10 years. The period of time specified in the regulations shall not exceed 10 years.

(6) The reduced workload shall be equal to at least one-half of the full-time equivalent required by the member's contract of employment during his or her final year of full-time employment.

(7) The member shall be paid creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced his or her workload.

(c) Prior to the reduction of a member's workload under this section, the employer in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the member's eligibility for the reduced workload program.

(d) The member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 21. Section 22900 of the Education Code is amended to read:

22900. By accepting employment, a person consents to make contributions pursuant to Section 22901 for service and compensation credited under this part.

SEC. 22. Section 22951 of the Education Code is amended to read:

22951. In addition to any other contributions required by this part, employers shall, on account of liability for benefits pursuant to Section 22717, contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions under this part are based.

SEC. 23. Section 22956 of the Education Code is amended to read:

22956. Employer and state contributions made to the plan pursuant to this part for service credited under the Defined Benefit Program shall not be credited to the individual member accounts. These contributions shall be held in the reserves of the plan to finance the employers' share of the cost of all benefits payable under the plan with respect to the Defined Benefit Program. Under no circumstances shall these employer and state contributions be allocated or awarded to individual members, their spouses, or beneficiaries.

SEC. 24. Section 23001 of the Education Code is amended to read:

23001. Each county superintendent, district superintendent, chancellor of a community college district, or other employing agency that reports directly to the system shall draw requisitions for contributions required by Sections 22901 and 22950 in favor of the State Teachers' Retirement System, and the requisitions, when allowed and signed by the county auditor, shall constitute a warrant against the county treasury. The county superintendent, district superintendent, chancellor of a community college district, or other employing agency thereupon shall forward the warrants to the board in Sacramento. The amounts received shall be deposited immediately in the State Treasury to the Teachers' Retirement Fund.

SEC. 25. Section 23008 of the Education Code is amended to read:

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any payment of creditable compensation to a member, proper adjustments shall be made on a monthly report, by the county superintendent, district superintendent, chancellor of a community college district, or other employing agency who submitted the report, within 60 days after discovery or notification by the system and any refunds shall be made to the member within the same time period by the employing agency.

(b) The board may assess penalties for late or improper adjustments pursuant to Section 23006. These penalties shall be no more than the regular interest as defined in Section 22162. The penalty so assessed shall be deemed interest earned in the year in which it was received.

(c) If a required report contains erroneous information and the system, acting in good faith, disburses funds from the Teacher's Retirement Fund based on that information, the county superintendent, district superintendent, chancellor of a community college district, or other employing agency who submitted the report shall reimburse the retirement fund in full for the amount of the erroneous disbursement. Reimbursement shall be made immediately upon notification by the system.

SEC. 26. Section 23102 of the Education Code is amended to read:

23102. Prior to the system paying a refund of accumulated retirement contributions under this part, the employer shall certify that the member's employment has been terminated unless the employment was terminated 12 months or more prior to the date the member signed the refund application.

SEC. 27. Section 23300 of the Education Code is repealed.

SEC. 28. Section 23300 is added to the Education Code, to read:

23300. (a) A member of the Defined Benefit Program may at any time designate a beneficiary, or change the designation of a beneficiary, to receive benefits payable under this part, except that no beneficiary designation may be made in derogation of the community property share

of any nonmember spouse under this part when any benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for distribution pursuant to Section 2610 of the Family Code. A designation of beneficiary shall be in writing on a form prescribed by the system, executed by the member, witnessed by two witnesses, neither of whom may be beneficiaries. To be valid the instrument shall be received in the office of the system in Sacramento before the member's death.

(b) Except as otherwise stated in this section, the designation of beneficiary, other than an option beneficiary, may be revoked by the party making the designation, and a different beneficiary designated in the same manner as provided in this section.

(c) An option beneficiary may designate a death beneficiary who would, upon the death of the option beneficiary, be entitled to receive the option beneficiary's accrued monthly allowance.

SEC. 28.5. Section 23300 is added to the Education Code, to read:

23300. (a) A member of the Defined Benefit Program may designate a beneficiary to receive benefits payable under this part upon the member's death. A beneficiary designation may not be made in derogation of a nonmember spouse's community property interest with respect to service or contributions credited under this part unless the nonmember spouse has previously obtained an alternative order pursuant to Section 2610 of the Family Code.

(b) A member's beneficiary designation for benefits payable under the Defined Benefit Program, including a designation made pursuant to Section 24300, shall also apply to benefits payable under the Defined Benefit Supplement Program. A beneficiary designation shall be in writing on a form prescribed by the system, executed by the member, and witnessed by two witnesses who are not designated as a beneficiary for benefits payable under either the Defined Benefit Program or the Defined Benefit Supplement Program.

(c) A beneficiary designation shall not be valid unless it is received in the office of the system in Sacramento prior to the member's death.

(d) A member may change or revoke a beneficiary designation at any time by making a new designation pursuant to this section.

(e) This section shall not be applicable to the designation of an option beneficiary or an annuity beneficiary under this part.

(f) An option beneficiary may designate a death beneficiary who would, upon the death of the option beneficiary, be entitled to receive the option beneficiary's accrued monthly allowance.

SEC. 29. Section 23800 of the Education Code is amended to read:

23800. (a) This chapter governs the eligibility provisions, benefit provisions, allowance computations, and related provisions for the

benefits payable under this part with respect to the Defined Benefit Program upon the death of eligible members. ''Members,'' as used in this chapter, means all members who were receiving a disability allowance on October 15, 1992, and all persons who were members of the plan under this part on October 15, 1992, who were not receiving an allowance and who did not elect, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under Chapter 23 (commencing with Section 23850).

(b) This chapter also contains three sections related to survivor benefits payable on account of deaths that occurred prior to July 1, 1972.

SEC. 30. Section 23850 of the Education Code is amended to read:

23850. This chapter governs the eligibility provisions, benefit provisions, allowance computations, and related provisions for the benefits payable under this part with respect to the Defined Benefit Program upon the death of eligible members. ''Member,'' as used in this chapter, means all persons who become members of the plan under this part on or after October 16, 1992, and all persons who were members as of October 15, 1992, who elected, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under the death benefit provisions of this chapter.

SEC. 31. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service under this part upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained the age of 55 years or more and has at least five years of credited service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820. The number of years of credited service performed in California shall not be less than the number of years necessary to determine final compensation pursuant to Section 22134 or 22135, whichever is applicable to the member.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if the member has attained the age of 55 years or older and retires concurrently under one or more of the retirement systems with which the member has concurrent membership as defined in Section 22115.2.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made even if the member has not earned five years of credited service.

SEC. 32. Section 24209 of the Education Code is amended to read:

24209. (a) Upon retirement for service following reinstatement, the member shall receive a service retirement allowance equal to the sum of both of the following:

(1) An amount equal to the monthly allowance the member was receiving immediately preceding reinstatement, exclusive of any amounts payable pursuant to Section 22714 or 22715, increased by the improvement factor that would have been applied to the allowance if the member had not reinstated.

(2) An amount calculated pursuant to Section 24202, 24202.5, 24203, 24203.5, or 24206 on service credited subsequent to the most recent reinstatement, the member's age at retirement, and final compensation.

(b) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22715, 22717, and 22826, is equal to or greater than 30 years, the amounts identified in paragraphs (1) and (2) of subdivision (a) shall be calculated pursuant to Section 24203.5. The improvement factor required in paragraph (1) of subdivision (a) shall be based on the allowance calculated pursuant to this subdivision.

(c) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22715, 22717, and 22826, is equal to or greater than 30 years, upon retirement for service following reinstatement, a member who retired pursuant to Section 24213, and received the terminated disability allowance for the prior retirement, shall receive a service retirement allowance equal to the sum of the following:

(1) An amount based on the service credit accrued prior to the effective date of the disability allowance, the member's age at the prior retirement increased by the factor provided in Section 24203.5, and projected final compensation.

(2) An amount calculated pursuant to Section 24202, 24202.5, 24203.5, or 24206 on service credited subsequent to the reinstatement, the member's age at retirement, and final compensation.

SEC. 33. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(c) The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(d) If the total amount of credited service, other than projected service or service that accrued pursuant to Sections 22714, 22715, 22717, and 22826, is equal to or greater than 30 years, the amounts identified in subdivisions (a) and (b) shall be calculated pursuant to Section 24203.5.

SEC. 34. Section 24307 of the Education Code is amended to read:

24307. (a) A member who qualifies to apply for retirement under Section 24201 or 24203 may make a preretirement election of an option, as provided in Section 24300 without right of revocation or change after the effective date of retirement, except as provided in this part. The preretirement election of an option shall become effective on the date a properly executed form prescribed by the system is signed, providing the election is received in the system's office in Sacramento within 30 days after the date of signature.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 may subsequently make a preretirement election of Option 8. The member may retain the same option and the same option beneficiary as named in the prior preretirement election, as an option under Option 8.

(c) Upon the member's death prior to the effective date of retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, under the assumption that the member retired for service pursuant to Section 24202, 24202.5, 24203, 24203.5, 24206, 24209, 24210, 24211, or 24212 on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in paragraph (1) of subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in subdivisions (a) and (b) of Section 23852, except that if the beneficiary dies before all of the member's accumulated retirement contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851 shall be paid to the beneficiary in a lump sum.

(d) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 and the option elected shall be paid.

(e) The amount of the service retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement or age on the last day of the month in which the member requested service retirement be effective. The modification of the service retirement allowance under the option elected shall be based on the ages of the member and the beneficiary designated under the option, as of the date the election was signed.

(f) A member who terminates the service retirement allowance pursuant to Section 24208 shall not be eligible to file a preretirement election of an option until one calendar year elapses from the date the allowance is terminated.

(g) The system shall inform members who are qualified to make a preretirement election of an option, through the annual statements of account, that the election of an option can be made.

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

SEC. 35. Section 24410.5 of the Education Code is amended to read:

24410.5. (a) Notwithstanding any provision of this part, including, but not limited to, subdivision (e) of Section 22664, the annual allowance payable on the effective date of this section to a retired member, an option beneficiary, or a surviving spouse receiving an allowance pursuant to either Section 23805 or 23855 shall not be less than the amount identified in the following schedule for the number of years of the member's credited service under the Defined Benefit

Program at the time of the member's retirement, disability, or death, excluding service credited pursuant to Sections 22714, 22715, 22717 and 22826, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415, as those sections read on December 31, 1999, excluding annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions:

20 years of credited service	$15,000
21 years of credited service	$15,500
22 years of credited service	$16,000
23 years of credited service	$16,500
24 years of credited service	$17,000
25 years of credited service	$17,500
26 years of credited service	$18,000
27 years of credited service	$18,500
28 years of credited service	$19,000
29 years of credited service	$19,500
30 years or more of credited service	$20,000

(b) Notwithstanding subdivision (a), the amount identified in the schedule in subdivision (a) shall be reduced:

(1) By 50 percent for a beneficiary receiving an allowance under Option 3 or Option 7.

(2) By one-third for an option beneficiary receiving an allowance under Option 4 after the death of the member or for a member receiving an allowance under Option 4 after the death of the option beneficiary.

(3) By 50 percent for an option beneficiary receiving an allowance under Option 5 after the death of the member or for a member receiving an allowance under Option 5 after the death of the option beneficiary.

(4) By a percentage equal to 100 percent minus the percentage of the member's modified allowance received by the option beneficiary for each option beneficiary receiving an allowance under Option 8.

(5) By 60 percent for a surviving spouse receiving an allowance pursuant to subdivision (a) of Section 23805.

(6) By 50 percent for a surviving spouse receiving an allowance pursuant to subdivision (c) of Section 23805 or Section 23855.

(c) A member to whom a disability allowance is payable on January 1, 2000, who subsequently receives a service retirement allowance pursuant to Section 24213 shall, upon the retirement for service, receive an increase in the service retirement allowance pursuant to this section.

(d) A member, beneficiary, or surviving spouse may receive an allowance pursuant to this section only if the member was an active

member at the time of the member's retirement, or death and, for those members who retired for service, the member retired on or after age 55, unless the member's allowance was not subject to a reduction due to retirement prior to an age specified in this part.

(e) A retired member, option beneficiary, or surviving spouse subject to this section shall receive the annual minimum allowance pursuant to this section unless the system receives in writing, on a form prescribed by the system, notification from the member, option beneficiary, or surviving spouse before May 1, 2000, of his or her election not to receive the increase provided under this section.

(f) Benefits payable under this section shall be initially paid by the system on July 1, 2000.

SEC. 36. Section 24415 of the Education Code is amended to read:

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to retired members, disabled members, and beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412, and excluding those provided pursuant to Section 24410.5.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as defined in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of distribution. In any year in which the purchasing power of the allowances of all retired members, disabled members, and beneficiaries equals not less than 75 percent and additional funds remain from the allocation authorized by this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, not part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000, and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

SEC. 36.5. Section 24415 of the Education Code is amended to read:

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412, and excluding those provided pursuant to Section 24410.5.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, whose allowances, after sequentially applying the annual improvement factor as specified in Sections 22140 and 22141, and the annual supplemental payment as defined in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of distribution. In any year in which the purchasing power of the allowances of all retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, equals not less than 75 percent and additional funds remain from the allocation authorized by this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The increases provided by subdivision (b) are not cumulative, not part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000, and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

SEC. 37. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, to retired members, disabled members, and beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Sections 24412 and 24415, and excluding those provided pursuant to Section 24410.5.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as defined in Sections 24412 and 24415, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Section 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000, and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

SEC. 37.5. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, to retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Sections 24412 and 24415, and excluding those provided pursuant to Section 24410.5.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as specified in Sections 24412 and 24415, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The increases provided by subdivision (b) are not cumulative, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Section 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000, and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

SEC. 38. Section 26104 of the Education Code is amended to read:

26104. ''Administrative costs'' means the costs of administering the Cash Balance Benefit Program for the plan year as determined by the board.

SEC. 39. Section 44922 of the Education Code is amended to read:

44922. Notwithstanding any other provision, the governing board of a school district or a county superintendent of schools may establish regulations which allow their certificated employees to reduce their workload from full-time to part-time duties.

The regulations shall include, but shall not be limited to, the following, if the employees wish to reduce their workload and maintain retirement benefits pursuant to Section 22724 of this code or Section 20815 of the Government Code:

(a) The employee shall have reached the age of 55 prior to reduction in workload.

(b) The employee shall have been employed full time in a position requiring certification for at least 10 years of which the immediately preceding five years were full-time employment.

(c) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full time in a position requiring certification for a total of at least five years without

a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service.

(d) The option of part-time employment shall be exercised at the request of the employee and can be revoked only with the mutual consent of the employer and the employee.

(e) The employee shall be paid a salary which is the pro rata share of the salary he or she would be earning had he or she not elected to exercise the option of part-time employment but shall retain all other rights and benefits for which he or she makes the payments that would be required if he or she remained in full-time employment.

The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee.

(f) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the employee's contract of employment during his or her final year of service in a full-time position.

(g) This option is limited in prekindergarten through grade 12 to certificated employees who do not hold positions with salaries above that of a school principal.

(h) The period of this part-time employment shall include a period of time, as specified in the regulations, which shall be up to and include five years for employees subject to Section 20815 of the Government Code or 10 years for employees subject to Section 22724 of this code.

(i) The period of part-time employment of employees subject to Section 20815 of the Government Code shall not extend beyond the end of the school year during which the employee reaches his or her 70th birthday. This subdivision shall not apply to any employee subject to Section 22724 of this code.

SEC. 40. Section 47611 of the Education Code is amended to read:

47611. (a) If a charter school chooses to make the State Teacher's Retirement Plan available, all employees of the charter school who perform creditable service shall be entitled to have that service covered under the plan's Defined Benefit Program or Cash Balance Benefit Program, and all provisions of Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) shall apply in the same manner as the provisions apply to other public schools in the school district that granted the charter.

(b) (1) If a charter school offers its employees coverage by the State Teachers' Retirement System or the Public Employees' Retirement System, or both, the charter school shall inform all applicants for positions within that charter school of the retirement system options for employees of the charter school.

(2) The information shall specifically include whether the charter school makes available to employees coverage under the State Teachers' Retirement System, the Public Employees' Retirement System, or both systems, and that accepting employment in the charter school may exclude the applicant from further coverage in the applicant's current retirement system, depending on the retirement options offered by the charter of the charter school.

SEC. 41. 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, 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.

SEC. 42. (a) Section 41 of this act shall not apply to with respect to Section 23300 of the Education Code, as added by this act.

(b) Section 28.5 of this bill incorporates provisions in Section 23300 of the Education Code proposed by both this bill and Assembly Bill 1509. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, and (2) each bill adds Section 23300 to the Education Code, in which case, Section 28 of this bill and Section 50 of Assembly Bill 1509 shall not become operative.

SEC. 43. (a) Section 41 of this act shall not apply to amendments made by this act to Section 24415 of the Education Code.

(b) Section 36.5 of this bill incorporates amendments to Section 24415 of the Education Code proposed by both this bill and AB 1509. 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 24415 of the Education Code, and (3) this bill is enacted after AB 1509, in which case Section 36 of this bill shall not become operative.

(c) Notwithstanding any other provision of this act, AB 429 and SB 1505, or either of them, (1) are enacted and become effective on or before January 1, 2001, and (2) amend Section 24415 of the Education Code, the prevailing amendments to that section made by either or both of those bills shall prevail over the amendments to that section made by this bill, whether those acts, or either of them, are enacted prior to, the enactment of this act.

SEC. 44. (a) Section 41 of this act shall not apply to amendments made by this act to Section 24417 of the Education Code.

(b) Section 37.5 of this bill incorporates amendments to Section 24415 of the Education Code proposed by both this bill and AB 1509. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 24417 of the Education Code, and (3) this bill is enacted after AB 1509, in which case Section 37 of this bill shall not become operative.

(c) Notwithstanding any other provision of this act, if AB 429 and SB 1505, or either of them, (1) are enacted and become effective on or before January 1, 2001, and (2) amend Section 24417 of the Education Code, the prevailing amendments to that section made by either of them or both of those bills shall prevail over the amendments to that section made by this bill, whether those acts, or either of them, are enacted prior to, or subsequent to, the enactment of this act.

CHAPTER 1026

An act to amend Sections 22141, 24410.5, 24415, and 24417 of, and to add Section 24410.6 to, the Education Code, relating to state teachers' retirement.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 22141 of the Education Code is amended to read:

22141. Notwithstanding Section 22140, ''improvement factor'' means an increase of 2 percent in benefits provided under Sections 24408 and 24409 for each year commencing on September 1, 1981, under Section 24410.5 for each year commencing on September 1, 2001, and under Sections 24410.6 and 24410.7 for each year commencing on September 1, 2002. The factor shall not be compounded nor shall it be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions. The Legislature reserves the right to adjust the amount of the improvement factor up or down as the economic conditions dictate. No adjustments of the improvement factor shall reduce the monthly retirement allowance or benefit below that which would be payable to the recipient under this part had this section not been enacted.

References in this section to Section 24410.7 shall be applicable only if that section is added by Assembly Bill 429 of the 1999–2000 Regular Session and becomes effective on or before January 1, 2001.

SEC. 2. Section 24410.5 of the Education Code is amended to read:

24410.5. (a) Notwithstanding any provision of this part, including, but not limited to, subdivision (e) of Section 22664, the annual allowance payable on the effective date of this section to a retired member, an option beneficiary, or a surviving spouse receiving an allowance pursuant to either Section 23805 or 23855 shall not be less than the amount identified in the following schedule for the number of years of the member's credited service under the Defined Benefit Program at the time of the member's retirement, disability, or death, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415, as those sections read on December 31, 1999, and excluding annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions:

20 years of credited service	$15,000
21 years of credited service	$15,500
22 years of credited service	$16,000
23 years of credited service	$16,500
24 years of credited service	$17,000
25 years of credited service	$17,500
26 years of credited service	$18,000
27 years of credited service	$18,500
28 years of credited service	$19,000
29 years of credited service	$19,500
30 years or more of credited service	$20,000

(b) Notwithstanding subdivision (a), the amount identified in the schedule in subdivision (a) shall be reduced:

(1) By 50 percent for a beneficiary receiving an allowance under Option 3 or Option 7.

(2) By one-third for an option beneficiary receiving an allowance under Option 4 after the death of the member or for a member receiving an allowance under Option 4 after the death of the option beneficiary.

(3) By 50 percent for an option beneficiary receiving an allowance under Option 5 after the death of the member or for a member receiving an allowance under Option 5 after the death of the option beneficiary.

(4) By a percentage equal to 100 percent minus the percentage of the member's modified allowance received by the option beneficiary for each option beneficiary receiving an allowance under Option 8.

(5) By 60 percent for a surviving spouse receiving an allowance pursuant to subdivision (a) of Section 23805.

(6) By 50 percent for a surviving spouse receiving an allowance pursuant to subdivision (c) of Section 23805 or Section 23855.

(c) A member to whom a disability allowance is payable on January 1, 2000, who subsequently receives a service retirement allowance pursuant to Section 24213 shall, upon the retirement for service, receive an increase in the service retirement allowance pursuant to this section.

(d) A member, beneficiary, or surviving spouse may receive an allowance pursuant to this section only if the member was an active member at the time of the member's retirement, or death and, for those members who retired for service, the member retired on or after age 55, unless the member's allowance was not subject to a reduction due to retirement prior to an age specified in this part.

(e) A retired member, option beneficiary, or surviving spouse subject to this section shall receive the annual minimum allowance pursuant to this section unless the system receives in writing, on a form prescribed by the system, notification from the member, option beneficiary, or surviving spouse before May 1, 2000, of his or her election not to receive the increase provided under this section.

(f) Benefits payable under this section shall be initially paid by the system on July 1, 2000.

SEC. 3. Section 24410.6 is added to the Education Code, to read:

24410.6. (a) Notwithstanding any provision of this part, including, but not limited to, subdivision (e) of Section 22664, and except as provided in subdivisions (b) and (c), the annual allowance payable on the effective date of this section to a retired member, an option beneficiary, or a surviving spouse receiving an allowance pursuant to either Section 23805 or 23855 shall not be less than the amount identified in the following schedule for the number of years of the member's credited service under the Defined Benefit Program at the time of the member's retirement, disability, or death, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415, as those sections read on December 31, 2000, and excluding annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions:

20 years of credited service	$15,000
21 years of credited service	$15,500
22 years of credited service	$16,000
23 years of credited service	$16,500
24 years of credited service	$17,000
25 years of credited service	$17,500

26 years of credited service	$18,000
27 years of credited service	$18,500
28 years of credited service	$19,000
29 years of credited service	$19,500
30 years or more of credited service	$20,000

(b) Notwithstanding subdivision (a), the amount identified in the schedule in subdivision (a) shall be reduced:

(1) By 50 percent for a beneficiary receiving an allowance under Option 3 or Option 7.

(2) By one-third for an option beneficiary receiving an allowance under Option 4 after the death of the member or for a member receiving an allowance under Option 4 after the death of the option beneficiary.

(3) By 50 percent for an option beneficiary receiving an allowance under Option 5 after the death of the member or for a member receiving an allowance under Option 5 after the death of the option beneficiary.

(4) By a percentage equal to 100 percent minus the percentage of the member's modified allowance received by the option beneficiary for each option beneficiary receiving an allowance under Option 8.

(5) By 60 percent for a surviving spouse receiving an allowance pursuant to subdivision (a) of Section 23805.

(6) By 50 percent for a surviving spouse receiving an allowance pursuant to subdivision (c) of Section 23805 or Section 23855.

(c) A benefit shall be paid pursuant to this section if both of the following apply:

(1) The retired member, the option beneficiary, or the surviving spouse had an allowance payable on January 1, 2000, and was not eligible to receive a benefit pursuant to Section 24410.5.

(2) The retired member or the member whose service was the basis of the allowance payable to the option beneficiary or surviving spouse was one of the following:

(A) A member who retired prior to the age of 55 years, provided the minimum allowance specified in subdivision (a) shall be reduced to an amount equal to that minimum allowance multiplied by the ratio of the percentage of final compensation per year of credited service on which the member's initial allowance was based to 1.4.

(B) A member who was paid a retirement allowance pursuant to Section 24213, if the member's credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, was less than 20 years but whose projected service to normal retirement age, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, was equal to or greater than 20 years, provided that the minimum allowance payable shall be based on 20 years of credited service.

(C) A member who retired as an inactive member.

(D) A member who retired prior to March 21, 1974, with 19.5 years or more of credited service, provided that the minimum allowance payable shall be based on 20 years of credited service.

(E) A member who retired on or after March 21, 1974, and prior to January 1, 2000, and whose credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, was less than 20 years, but whose credited service, excluding service credited pursuant to Sections 22714, 22715, and 22826, but including service credited pursuant to Section 22717, was equal to or greater than 20 years, provided that the minimum allowance payable shall be based on 20 years of credited service.

(F) A member whose credited service, excluding service credited pursuant to Sections 22714, 22715, and 22826, but including credited service that a court has ordered be awarded to the member's nonmember spouse pursuant to Section 22652, equaled at least 20 years, provided that the amount payable to the member pursuant to this section shall be based on the amount of service credited to the member, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, and the amount awarded to the nonmember spouse, and further provided that the minimum allowance specified in subdivision (a) shall be reduced to an amount equal to that minimum allowance multiplied by the ratio of (i) the amount of service credited to the member, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, to (ii) the sum of the amount of service credited to the member, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, and the amount awarded to the nonmember spouse.

(d) A benefit shall be paid pursuant to this section to a retired member receiving a benefit pursuant to Section 24410.5 if (1) the member meets the criteria of subparagraph (F) of paragraph (2) of subdivision (c), and (2) the allowance payable under that subparagraph, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415, is greater than the allowance payable under Section 24410.5, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415.

(e) A retired member, option beneficiary, or surviving spouse subject to this section shall receive the annual minimum allowance pursuant to this section unless the system receives in writing, on a form prescribed by the system, notification from the member, option beneficiary, or surviving spouse of his or her election not to receive the increase provided under this section.

(f) Benefits payable under this section shall be initially paid by the system on or before September 1, 2001.

SEC. 4. Section 24415 of the Education Code is amended to read:

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to retired members, disabled members, and beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412, but excluding those provided pursuant to Sections 22410.5, 24410.6, and 24410.7.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as defined in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of distribution. In any year in which the purchasing power of the allowances of all retired members, disabled members, and beneficiaries equals not less than 75 percent and additional funds remain from the allocation authorized by this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, not part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000, and June of the fiscal year preceding the fiscal year of

distribution, after the application of increases authorized by Section 24412 that are made to those benefits.

(g) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Sections 24410.6 and 24410.7 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2001, and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Sections 24410.6 and 24410.7.

References in this section to Section 24410.7 shall be applicable only if that section is added by Assembly Bill 429 of the 1999–2000 Regular Session and becomes effective on or before January 1, 2001.

SEC. 5. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, to retired members, disabled members, and beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412 and Section 24415, and excluding those provided pursuant to Sections 24410.5, 24410.6, and 24410.7.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as defined in Section 24412 and Section 24415, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Section 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000, and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to those benefits.

(g) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Sections 24410.6 and 24410.7 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2001, and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Sections 24410.6 and 24410.7.

References in this section to Section 24410.7 shall be applicable only if that section is added by Assembly Bill 429 of the 1999–2000 Regular Session and becomes effective on or before January 1, 2001.

CHAPTER 1027

An act to amend Sections 22141, 24415, and 24417 of, and to add Section 24410.7 to, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 22141 of the Education Code is amended to read:

22141. Notwithstanding Section 22140, ''improvement factor'' means an increase of 2 percent in benefits provided under Sections 24408 and 24409 for each year commencing on September 1, 1981, and under Section 24410.5 for each year commencing September 1, 2001,

and under Sections 24410.6 and 24110.7 for each year commencing September 1, 2002. The factor shall not be compounded nor shall it be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions. The Legislature reserves the right to adjust the amount of the improvement factor up or down as the economic conditions dictate. No adjustments of the improvement factor shall reduce the monthly retirement allowance or benefit below that which would be payable to the recipient under this part had this section not been enacted.

SEC. 2. Section 24410.7 is added to the Education Code, to read:

24410.7. (a) The monthly allowance payable on the effective date of this section, excluding annuities payable from accumulated annuity deposit contributions and tax-sheltered annuity contributions and benefits payable pursuant to Sections 24410.5 and 24410.6, to retired members and nonmember spouses, disabled members, and beneficiaries, including option beneficiaries, shall be increased by the percentage set forth opposite the applicable period during which retirement, disability, or death occurred set forth in the following schedule:

Period during which retirement, disability, or death occurred:	Percentage:
36 months ending Dec. 31, 2000	0.0%
12 months ending Dec. 31, 1997	1.0%
24 months ending Dec. 31, 1996	2.0%
60 months ending Dec. 31, 1994	3.0%
60 months ending Dec. 31, 1989	4.0%
120 months ending Dec. 31, 1984	5.0%
Dec. 31, 1974 or earlier	6.0%

(b) The increase provided pursuant to this section is in addition to any payments received by a retired member or nonmember spouse, disabled member, or beneficiary, including an option beneficiary, under Section 24415.

(c) Benefits payable under this section shall be initially payable by the system on or before July 1, 2001.

SEC. 3. Section 24415 of the Education Code is amended to read:

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance

after the application of all allowance increases authorized by this part, including those specified in Section 24412, and excluding those provided pursuant to Sections 24410.5, 24410.6, and 24410.7.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as specified in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of distribution. In any year in which the purchasing power of the allowances of all retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, equals not less than 75 percent and additional funds remain from the allocation authorized by this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The increases provided by subdivision (b) are not cumulative, not part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

(g) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Sections 24410.6 and 24410.7 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75

percent of the change in the All Urban California Consumer Price Index between January 2001 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Sections 24410.6 and 24410.7.

SEC. 4. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, to retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Sections 24412 and 24415, and excluding those provided pursuant to Sections 24410.5, 24410.6, and 24410.7.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as specified in Sections 24412 and 24415, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of the benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The increases provided by subdivision (b) are not cumulative, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision

(b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2000 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

(g) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Sections 24410.6 and 24410.7 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 75 percent of the change in the All Urban California Consumer Price Index between January 2001 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Sections 24410.6 and 24410.7.

CHAPTER 1028

An act to add Sections 22134.5 and 22136.5 to the Education Code, relating to retirement.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 22134.5 is added to the Education Code, to read:

22134.5. (a) Notwithstanding Section 22134, ''final compensation'' means the highest average annual compensation earnable by a member during any period of 12 consecutive months while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last consecutive 12-month period of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of 12 consecutive months, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23805.

(e) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(g) This section shall only apply to a member who has 25 or more years of credited service, excluding service credited pursuant to Section 22714, 22715, 22717, or 22826, but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. This section also shall apply to a nonmember spouse, if the member had at least 25 years of credited service, excluding service credited pursuant to Section 22714, 22715, 22717, or 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

SEC. 2. Section 22136.5 is added to the Education Code, to read:

22136.5. (a) Notwithstanding Section 22136, ''final compensation'' with respect to a member whose salary while an active member was reduced because of a reduction in school funds means the highest average annual compensation earnable by the member during any 12 months while employed to perform creditable service subject to coverage by the Defined Benefit Program if the member elects to be subject to this section.

(b) This section shall only apply to a member who has 25 or more years of credited service, excluding service credited pursuant to Section

22714, 22715, 22717, or 22826, but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. This section also shall apply to a nonmember spouse, if the member had at least 25 years of credited service, excluding service credited pursuant to Section 22714, 22715, 22717, or 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

CHAPTER 1029

An act to add Section 24203.6 to the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 24203.6 is added to the Education Code, to read:

24203.6. (a) In addition to the amount otherwise payable pursuant to this chapter, a member who (1) retires for service on or after January 1, 2001, (2) has, prior to January 1, 2011, 30 or more years of credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826 but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652, and (3) is receiving an allowance subject to Section 24203.5, shall receive a monthly increase in the allowance, prior to any modification pursuant to Section 24300, in the amount identified in the following schedule for the number of years of the member's credited service at the time of retirement, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826 but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652:

30 years of credited service	$200
31 years of credited service	$300
32 or more years of credited service	$400

(b) This section also shall apply to a nonmember spouse, if the member is eligible for the allowance increase pursuant to subdivision (a) upon his or her retirement for service and had at least 30 years of credited service, excluding service credited pursuant to Section 22714, 22715,

22717, or 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

(c) The allowance increase provided under this section shall not be subject to Sections 24415 and 24417, but shall be subject to Section 22140.

CHAPTER 1030

An act to amend Sections 20677, 20962, 20966, and 21354.1 of, and to add Sections 3562.2, 20635.1, 20636.1, 20687.1, and 20831.1 to, the Government Code, relating to school employees' retirement, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 3562.2 is added to the Government Code, to read:

3562.2. Notwithstanding subdivision (r) of Section 3562, for purposes of the California State University only, ''scope of representation'' also means any retirement benefits available to a state member under Part 3 (commencing with Section 2000) of Title 2.

SEC. 2. Section 20635.1 is added to the Government Code, to read:

20635.1. Notwithstanding Section 20635, and Section 45102 of the Education Code, when the compensation of a school member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service. For the purposes of this part, overtime for school members is the aggregate service performed by an employee as a member for all school employers and in all categories of employment in excess of 40 hours of work per week, and for which monetary compensation is paid.

If a school member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system.

SEC. 3. Section 20636.1 is added to the Government Code, to read:

20636.1. (a) Notwithstanding Section 20636, and Section 45102 of the Education Code, ''compensation earnable'' by a school member means the payrate and special compensation of the member, as defined by subdivisions (b) and (c), and as limited by Section 21752.5.

(b) (1) ''Payrate'' means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. For noncertificated members, where the normal work schedule is less than 40 hours per week, payments for additional services rendered, not to exceed 40 hours per week, shall be

reported as compensation earnable for all months of the year in which work is performed. ''Payrate,'' for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(A) For the purposes of this section, "noncertificated members'' shall mean members who retain membership under this system while employed with a school employer in positions not subject to coverage under the Defined Benefit Program under the State Teacher's Retirement System.

(B) For the purposes of this section, and Sections 20962 and 20966, ''certificated members'' shall mean members who retain membership under this system while employed in positions subject to coverage under the Defined Benefit Program under the State Teacher's Retirement System.

(2) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(3) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.

(c) (1) Special compensation of a school member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

(4) Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20691, provided that the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.

(5) The monetary value of any service or noncash advantage furnished by the employer to the member, except as expressly and

specifically provided in this part, shall not be special compensation unless regulations promulgated by the board specifically determine that value to be ''special compensation.''

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes ''special compensation'' as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

(e) (1) As used in this part, ''group or class of employment'' means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. Under no circumstances shall one employee be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, ''final settlement pay'' means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

SEC. 4. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred

seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976. The normal rate of contribution for a school member or a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after June 21, 1971.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(3) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21353.5, 21354, or 21354.1 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs. Notwithstanding the foregoing, effective January 1, 2001, the normal rate of contribution for school members whose service is included in the federal system shall not be reduced pursuant to this paragraph as applied to compensation earned on or after that date.

(b) (1) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (3) of subdivision (a).

(c) The normal rate of contribution for a state miscellaneous or state industrial member who is subject to Section 21076 or Section 21077 shall be 0 percent.

(d) A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

(e) A member who elects to become subject to Section 21353 or 21354.1, as applicable, shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be

applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073 or 21073.1, as applicable.

SEC. 4.5. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a school member or a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after June 21, 1971.

(3) Notwithstanding paragraph (2), the normal rate of contribution for a local miscellaneous member shall be 8 percent of the compensation paid that member for service rendered on and after the date the member's contracting agency elects to make local miscellaneous members subject to the benefit formula provided in Section 21354.3.

(4) Notwithstanding paragraph (2), the normal rate of contribution for a local miscellaneous member shall be 9 percent of the compensation paid that member for service rendered on and after the date the member's contracting agency elects to make local miscellaneous members subject to the benefit formula provided in Section 21354.4.

(5) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(6) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21353.5, 21354, or 21354.1, 21354.3, or 21354.4 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs. Notwithstanding the foregoing, effective January 1, 2001, the normal rate of contribution for school members whose service is included in the federal system shall not be reduced pursuant to this paragraph as applied to compensation earned on or after that date.

(b) (1) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars

($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (6) of subdivision (a).

(c) The normal rate of contribution for a state miscellaneous or state industrial member who is subject to Section 21076 or 21077 shall be 0 percent.

(d) A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

(e) A member who elects to become subject to Section 21353 or 21354.1, as applicable, shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073 or 21073.1, as applicable.

SEC. 5. Section 20687.1 is added to the Government Code, to read:

20687.1. (a) The normal rate of contribution for state peace officer/firefighter members subject to Section 21363.3 shall be 8 percent of the compensation in excess of eight hundred sixty-three dollars ($863) per month paid those members. The Legislature reserves the right to increase the rate of contribution of those peace officer/firefighter members as it may find appropriate from time to time.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 6. Section 20831.1 is added to the Government Code, to read:

20831.1. Any school employer that fails or refuses to report an employee's compensation earnable required by this chapter within the applicable time limitations shall be required to pay administrative costs

of five hundred dollars ($500) per member as a reimbursement to this system's current year budget.

SEC. 7. Section 20962 of the Government Code is amended to read:

20962. One year of service credit shall be granted for service rendered and compensated in a fiscal year in full-time employment for any of the following:

(a) One academic year of service for persons employed on an academic year basis by the University of California, the California State University system, or school employees who are certificated members, under terms and conditions prescribed by the board.

(b) Ten months of service for persons employed on a monthly basis.

(c) Two hundred fifteen days of service after June 30, 1951, and 250 days prior to July 1, 1951, for persons employed on a daily basis.

(d) One thousand seven hundred twenty hours of service after June 30, 1951, and 2,000 hours prior to July 1, 1951, for persons employed on an hourly basis.

(e) Nine months of service for state employees represented by State Bargaining Unit 3 and subject to the 9–12 pay plan or leave plan, provided a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this subdivision. A fractional year of credit shall be given for service rendered in a fiscal year in full-time employment for less than the time prescribed in this section.

SEC. 8. Section 20966 of the Government Code is amended to read:

20966. For the purpose of calculating retirement allowances, credit for service rendered on a part-time basis in each fiscal year shall be based on the ratio that the service rendered bears:

(a) To one academic year if rendered on an academic year basis, for members employed by the University of California, the California State University system, or school employees who are certificated members, under terms and conditions prescribed by the board.

(b) To 10 months if rendered on a monthly basis.

(c) To 215 days if the service was rendered after June 30, 1951, or to 250 days if the service was rendered prior to July 1, 1951, for services rendered on a daily basis.

(d) To 1,720 hours if the service was rendered after June 30, 1951, or to 2,000 hours if the service was rendered prior to July 1, 1951, for service rendered on an hourly basis.

SEC. 9. Section 21354.1 of the Government Code is amended to read:

21354.1. (a) The combined current and prior service pensions for school members, state miscellaneous or state industrial members, or university members who are subject to the provisions of this section is a pension derived from the contributions of the employer sufficient,

when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service, except service in a category of membership other than that of a school member, state miscellaneous or state industrial member, or university member or service covered under this retirement formula with which the member is entitled to be credited at retirement:

Age at retirement	Fraction
50	0.550
50 1/4	0.573
50 1/2	0.595
50 3/4	0.618
51	0.640
51 1/4	0.663
51 1/2	0.685
51 3/4	0.708
52	0.730
52 1/4	0.753
52 1/2	0.775
52 3/4	0.798
53	0.820
53 1/4	0.843
53 1/2	0.865
53 3/4	0.888
54	0.910
54 1/4	0.933
54 1/2	0.955
54 3/4	0.978
55	1.000
55 1/4	1.008
55 1/2	1.016
55 3/4	1.024
56	1.032
56 1/4	1.040
56 1/2	1.048

56 3/4	1.055
57	1.063
57 1/4	1.071
57 1/2	1.079
57 3/4	1.086
58	1.094
58 1/4	1.102
58 1/2	1.110
58 3/4	1.118
59	1.125
59 1/4	1.134
59 1/2	1.141
59 3/4	1.149
60	1.157
60 1/4	1.165
60 1/2	1.173
60 3/4	1.180
61	1.188
61 1/4	1.196
61 1/2	1.203
61 3/4	1.211
62	1.219
62 1/4	1.227
62 1/2	1.235
62 3/4	1.243
63 and over	1.250

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars ($400) per month for all service of a member any of whose service has been included in the federal system. This subdivision shall not apply to school members whose service is included in the federal system with respect to service performed on or after January 1, 2001.

(c) This section shall supersede Section 21353 for all school members, all university members, and all state miscellaneous members, with respect to service rendered for the California State University or the legislative or judicial branch of government, who retire on or after January 1, 2000.

(d) This section shall also supersede Section 21353 for state miscellaneous or state industrial members, for service not subject to subdivision (c), who are employed by the state on or after January 1, 2000, and who do not elect under Section 21070.5 to be subject to Second Tier benefits.

(e) Operation and application of this section are subject to the limitations set forth in Section 21251.13.

SEC. 9.5. Section 21354.1 of the Government Code is amended to read:

21354.1. (a) The combined current and prior service pensions for school members, state miscellaneous or state industrial members, local miscellaneous members employed by a county superintendent of schools specified in subdivision (e), or university members who are subject to the provisions of this section is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service, except service in a category of membership other than that of a school member, state miscellaneous or state industrial member, or university member or service covered under this retirement formula with which the member is entitled to be credited at retirement:

Age at retirement	Fraction
50	0.550
50 1/4	0.573
50 1/2	0.595
50 3/4	0.618
51	0.640
51 1/4	0.663
51 1/2	0.685
51 3/4	0.708
52	0.730
52 1/4	0.753
52 1/2	0.775
52 3/4	0.798
53	0.820
53 1/4	0.843

53 1/2	0.865
53 3/4	0.888
54	0.910
54 1/4	0.933
54 1/2	0.955
54 3/4	0.978
55	1.000
55 1/4	1.008
55 1/2	1.016
55 3/4	1.024
56	1.032
56 1/4	1.040
56 1/2	1.048
56 3/4	1.055
57	1.063
57 1/4	1.071
57 1/2	1.079
57 3/4	1.086
58	1.094
58 1/4	1.102
58 1/2	1.110
58 3/4	1.118
59	1.125
59 1/4	1.134
59 1/2	1.141
59 3/4	1.149
60	1.157
60 1/4	1.165
60 1/2	1.173
60 3/4	1.180
61	1.188
61 1/4	1.196
61 1/2	1.203
61 3/4	1.211
62	1.219
62 1/4	1.227
62 1/2	1.235

$62^{3}/_{4}$	1.243
63 and over	1.250

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars ($400) per month for all service of a member any of whose service has been included in the federal system. This subdivision shall not apply to school members whose service is included in the federal system with respect to service performed on or after January 1, 2001.

(c) This section shall supersede Section 21353 for all school members, all university members, and all state miscellaneous members, with respect to service rendered for the California State University or the legislative or judicial branch of government, who retire on or after January 1, 2000.

(d) This section shall also supersede Section 21353 for state miscellaneous or state industrial members, for service not subject to subdivision (c), who are employed by the state on or after January 1, 2000, and who do not elect under Section 21070.5 to be subject to Second Tier benefits.

(e) This section shall apply to the San Diego County Superintendent of Schools if that agency elects to make its miscellaneous members subject to this section by amendment to its contract made in the manner prescribed for approval of contracts. This section shall be operative with respect to the agency from the effective date of the amendment to the agency's contract until January 1, 2004, and shall only be applicable to the agency's miscellaneous members who retire for service during that period.

SEC. 10. Section 4.5 of this bill incorporates amendments to Section 20677 of the Government Code proposed by both this bill and AB 2642. 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 20677 of the Government Code, and (3) this bill is enacted after AB 2642, in which case Section 4 of this bill shall not become operative.

SEC. 11. Section 9.5 of this bill incorporates amendments to Section 21354.1 of the Government Code proposed by this bill and SB 1396. 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 21354.1 of the Government Code, and (3) this bill is enacted after SB 1396, in which case Section 21354.1 of the Government Code, as amended by SB 1396, shall remain operative only until the operative

date of this bill, at which time Section 9.5 of this bill shall become operative, and Section 9 of this bill shall not become operative.

CHAPTER 1031

An act to amend Section 21541 of, and to add Section 21541.5 to, the Government Code, relating to preretirement death benefits.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 21541 of the Government Code is amended to read:

21541. The special death benefit consists of the following:

(a) An amount equal to and derived from the same source as the basic death benefit exclusive of the contributions from which the annuity provided under subdivision (d) is paid.

(b) An amount sufficient, when added to the amount provided under subdivision (a), to provide, when applied according to tables adopted by the board, a monthly death allowance equal to one-half of his or her final compensation in the membership category applicable to him or her at the time of the injury, or the onset of the disease, causing death, as adjusted pursuant to subdivision (e), which amount shall be payable to the surviving spouse to whom he or she was married either continuously for at least one year prior to death, or prior to sustaining the injury or disease resulting in death, as long as the surviving spouse lives; or, if there is no surviving spouse or if the spouse dies before all children of the deceased member attain the age of 22 years, to his or her children under the age of 22 years collectively until every child shall have died, married, or attained the age of 22 years. However, no child shall receive any part of the allowance after marrying or attaining the age of 22 years. The increases described in this section shall only apply to spouses of deceased members who would have been less than 50 years of age, if still living on January 1, 2001.

(c) During the lifetime of the surviving spouse, an additional percentage of the death benefit allowed by this section, exclusive of the annuity under subdivision (d), shall be paid to the spouse of a member who is killed in the performance of his or her duty or who dies as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of his or her duty, for each of his or her children during the lifetime of the child, or until the child marries or

reaches the age of 22 years, as follows: for one child, 25 percent; for two children, 40 percent; and for three or more children, 50 percent.

(d) An annuity that is the actuarial equivalent, assuming monthly payments for life to the surviving spouse, of the deceased's accumulated additional contributions at the date of his or her death, plus his or her accumulated contributions at that date based on compensation earned in any membership category other than the category applicable to him or her at the time of the injury or the onset of the disease causing death.

(e) For purposes of this section only, the deceased member's final compensation shall be deemed to increase, and the death benefit under subdivision (b) shall be increased correspondingly, at any time and to the extent the compensation is increased for then-active members employed in the job classification and membership category that was applicable to the deceased member at the time of the injury, or the onset of the disease, causing death. The deceased member's final compensation shall be deemed to be subject to further increases hereunder only until the earlier of (1) the death of the surviving spouse or (2) the date that the deceased member would have attained the age of 50 years.

(f) Monthly allowances shall be adjusted annually for time commencing on the first day of September and effective with the monthly allowance regularly payable on the first day of the October beginning with October 1, 2001. The employer of the deceased member shall be responsible for reporting and certifying top range salary rates by the first day of July, beginning with July 1, 2001.

(g) If the surviving spouse does not have custody of the member's children, the additional amount payable pursuant to this section shall be payable to the person having custody of the children for each child during the lifetime of the child, or until the child marries or reaches the age of 22 years.

The computation for time prior to entering the membership category applicable to the deceased at the time of the injury, or the onset of the disease, causing death shall be based on the compensation earnable by him or her in the position first held by him or her in that category.

''Spouse,'' for purposes of this section, means a wife or husband.

This section shall apply to all contracting agencies and to the employees of all contracting agencies.

(h) For purposes of Section 21313, the base allowance shall be the allowance as increased under this section. The base year for annual adjustments of allowances increased by this section shall be the calendar year preceding the year of the adjustment.

(i) The amount of the death benefit payable pursuant to this section on and after January 1, 2001, with respect to any member who died prior to that date, shall be recalculated on and after that date pursuant to subdivision (e).

SEC. 2. Section 21541.5 is added to the Government Code, to read:

21541.5. Any child whose benefits under Section 21541 were terminated upon his or her adoption, pursuant to that section as it read prior to January 1, 2001, shall have those benefits restored as follows:

(a) The child shall receive a lump-sum payment in the amount that would have paid, if he or she had not been adopted, from the date of adoption to the earlier of (1) the date his or her eligibility for benefits under Section 21541 would have otherwise terminated had he or she not been adopted or (2) January 1, 2001.

(b) If on January 1, 2001, the child is eligible for benefits under Section 21541, he or she shall receive benefits from and after that date pursuant to Section 21541.

CHAPTER 1032

An act to amend Section 22950 of, to amend and renumber Section 25000 of, to add Section 25923 to, and to add Chapter 3 (commencing with Section 25930) and Chapter 4 (commencing with Section 25940) to Part 13.5 of Division 1 of Title 1 of, the Education Code, relating to teachers' health benefits, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 22950 of the Education Code is amended to read:

22950. (a) Employers shall contribute monthly to the system 8 percent of the creditable compensation upon which members' contributions under this part are based.

(b) From the contributions required under subdivision (a), there shall be deposited in the Teachers' Retirement Fund an amount, determined by the board, that is not less than the amount, determined in a actuarial valuation of the Defined Benefit Program pursuant to Section 22311.5, necessary to finance the liabilities associated with the benefits of the Defined Benefit Program over the funding period adopted by the board, after taking into account the contributions made pursuant to Sections 22901, 22951, and 22955.

(c) The amount of contributions required under subdivision (a) that is not deposited in the Teachers' Retirement Fund pursuant to subdivision (b) shall be deposited directly into the Teachers' Health

Benefits Fund, as established in Section 25930, and shall not be deposited into or transferred from the Teachers' Retirement Fund.

SEC. 2. Section 25000 of the Education Code is amended and renumbered to read:

25900. (a) All costs incurred by the system to develop health care benefit programs pursuant to this part shall be paid by allocations from the Teachers' Retirement Fund as appropriated for that purpose.

(b) Any health care benefits program developed by the system pursuant to this part shall not be implemented by the system unless specifically authorized by a statute enacted by the Legislature.

SEC. 3. Section 25923 is added to the Education Code, to read:

25923. ''Fund'' means the Teachers' Health Benefits Fund.

SEC. 4. Chapter 3 (commencing with Section 25930) is added to Part 13.5 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 3. ESTABLISHMENT AND CONTROL OF FUND

25930. There is in the State Treasury a special trust fund to be known as the Teachers' Health Benefits Fund. There shall be deposited in the fund the employer contributions required under subdivision (c) of Section 22950, income on investments, other interest income, income from fees and penalties, premiums paid by members, donations, legacies, bequests made to the fund and accepted by the board, and any other amounts provided by this part. Notwithstanding Section 11340 of the Government Code, the proceeds of the fund are hereby continuously appropriated without regard to fiscal year for purposes of this part. The design and administration of the fund and any program financed from the fund shall comply with Section 115 of Title 26 of the United States Code.

25931. The board shall have exclusive control of the administration of the fund. No transfers or disbursements of any amount from the fund shall be made except upon the authorization of the board for the purpose of carrying into effect the provisions of this part. Except as otherwise limited by the California Constitution and by law, the board may, in its discretion, invest the assets of the fund through the purchase, holding, or sale of any investment, financial instrument, or financial transaction, when the investment, financial instrument, or financial transaction is prudent in the informed opinion of the board.

25932. Return on investments shall be collected by the State Treasurer and, together with any other moneys received for the fund, shall be immediately deposited to the credit of the fund and reported immediately to the system. Money in whatever form received directly by the system for the fund shall be deposited immediately in the State Treasury to the credit of the fund.

25933. (a) For purposes of this section, ''plan'' means any health benefits program that is financed from the proceeds of the fund.

(b) The board shall maintain all data necessary to perform an actuarial investigation of the demographic and economic experience of the plan and for the actuarial valuation of the assets and liabilities of the plan.

(c) The board shall retain the services of an actuary to do all of the following:

(1) Make recommendations to the board for the adoption of actuarial assumptions that, in the aggregate, are reasonably related to the past experience of the plan and reflect the actuary's informed estimate of the future experience.

(2) Make an actuarial investigation of the demographic and economic experience, including the mortality, service, and other experience, of the plan with respect to members or any other persons eligible to receive benefits from the plan.

(3) At least biennially, using actuarial assumptions adopted by the board, perform an actuarial valuation of the plan that identifies the assets and liabilities of the plan, and report the findings to the board. The report of the actuary on the results of the actuarial valuation shall identify and include the components of normal cost and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on the actuarial valuation shall be transmitted to the Governor and to the Legislature.

(4) Recommend to the board all rates and factors necessary to administer the plan, including, but not limited to, mortality tables and interest rates.

(5) Recommend to the board a strategy for amortizing any unfunded actuarial obligation.

SEC. 5. Chapter 4 (commencing with Section 25940) is added to Part 13.5 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 4. MEDICARE BENEFITS PROGRAM

25940. (a) Effective July 1, 2001, the system shall pay to the federal Health Care Financing Administration the premiums associated with Medicare Part A for retired members described in this section.

(b) This section shall apply only to a retired member of the Defined Benefit Program who: (1) retired prior to January 1, 2001, (2) is not eligible for Medicare Part A without payment of a premium, (3) is at least 65 years of age, and (4) enrolled in Medicare Parts A and B at the age of 65 years or as of July 1, 2001, whichever is later.

(c) The board may extend eligibility for the payments described in this section to members of the Defined Benefit Program who meet the requirements of subdivision (d) and who retire on or after January 1,

2001, within a calendar year specified by the board, if the board finds that the cost of the payments for members retiring during the specified calendar year may be paid within the anticipated resources available in the fund, as determined by the actuarial valuation of the plan established by this chapter, conducted pursuant to Section 25933. Any extension of eligibility to members who retire on or after January 1, 2001, shall be provided equally to any member who meets the requirements of subdivision (d) and retires during the calendar year specified by the board.

(d) Eligibility for the payments described in this section pursuant to subdivision (c) shall be limited to members of the Defined Benefit Program who retire from a school district that either: (1) completed a division pursuant to Section 22156 of the Government Code prior to January 1, 2001; or (2) completed or is conducting a division pursuant to that section on or after January 1, 2001, and, if the member was less than 58 years of age at the time of the division, the member elected to be covered by Medicare.

(e) The amount paid to the federal Health Care Financing Administration pursuant to this section shall include any penalties applicable to enrollment in Medicare Part A or Part B by members who enroll after the age of 65 years. Notwithstanding any other provision of this section, this subdivision shall apply only to members who are over the age of 65 years on July 1, 2001. The board may require a member on whose behalf a penalty would be paid pursuant to this subdivision to authorize the system to deduct the Part B premium from the member's retirement allowance as a condition of having the system pay the Part A premium pursuant to this section.

SEC. 6. There is hereby appropriated from the Teachers' Health Benefits Fund to the Teachers' Retirement Board the sum of five hundred thousand dollars ($500,000) for administration of the provisions of this act.

CHAPTER 1033

An act to add Sections 11629.731 and 11629.931 to the Insurance Code, relating to automobile insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11629.731 is added to the Insurance Code, to read:

11629.731. A person who meets the requirements of subdivision (a) of Section 11629.73, and who claims that he or she meets the requirements of subdivisions (b) to (e), inclusive, of Section 11629.73 based entirely or partially on a driver's license and driving experience obtained other than in the United States or Canada, shall be entitled to a rebuttable presumption that he or she is qualified to purchase a low-cost automobile insurance policy under the pilot program if he or she has been licensed to drive pursuant to a license obtained in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (b) to (e), inclusive, for that period.

SEC. 2. Section 11629.931 is added to the Insurance Code, to read:

11629.931. A person who meets the requirements of subdivision (a) of Section 11629.93, and who claims that he or she meets the requirements of subdivisions (b) to (e), inclusive, of Section 11629.73 based entirely or partially on a driver's license and driving experience obtained other than in the United States or Canada, shall be entitled to a rebuttable presumption that he or she is qualified to purchase a low-cost automobile insurance policy under the pilot program if he or she has been licensed to drive pursuant to a license obtained in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (b) to (e), inclusive, for that period.

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 clarify the eligibility requirements for low-cost auto insurance policies as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1034

An act to add Section 14105 to the Government Code, relating to transportation.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 14105 is added to the Government Code, to read:

14105. (a) The department may verify that all construction projects performed under its jurisdiction meet or exceed all standards and specifications included in the projects.

(b) Unless a contract provides that a contractor or service provider will perform quality control under the contract, the department may assign qualified state employees or other persons, subject to existing law, to perform all inspection and testing required under existing law, regulation, or policy on any project performed under its jurisdiction that requires the inspection of construction activity or material, including, but not limited to, commercial and fabricated material.

(c) If no other law or regulation requires inspection and testing, the department may adopt and enforce a strict policy requiring inspection of construction activity or material, including, but not limited to, commercial and fabricated material.

(d) Any contractor or service provider who performs quality control inspections and tests as part of a contract with the department shall be certified on a prescribed random basis by qualified state employees or an organization certified by the department pursuant to applicable law, regulation, or policy.

(e) Quality assurance testing and inspection shall be performed over the entire period of a contract.

(f) Nothing in this section is intended to expand or restrict the authority of the department to contract for the provision of construction, inspection, management, and testing services from qualified private sector firms.

(g) No person shall willfully conceal, alter, misrepresent, or distort, or attempt to conceal, alter, misrepresent, or distort the findings of any laboratory or subcontractor that provides quality control inspection and testing services to a contractor under this section.

(1) If the prime contractor is not found to have concealed, altered, misrepresented, or distorted, or attempted to conceal, alter, misrepresent, or distort the findings of any laboratory or subcontractor by reason of having a subcontractor perform inspection and testing services, then the prime contractor is not considered to be in violation of this section.

(2) Whenever any person, firm, corporation, partnership, or association performing quality control inspection and testing services on a public work contract, pursuant to Section 1101 of the Public Contract Code, and is under the jurisdiction of the department, is found by the department to have violated this section, the department shall order for

a period of not less than one year and not more than three years that the person or entity refrain from doing any of the following within the department's jurisdiction:

(A) Bid on a public work contract.

(B) Work on a public work contract.

(C) Be awarded a public work contract.

(3) Any determination by the department pursuant to paragraph (2) shall be made after a full investigation by the department and a fair and impartial hearing with reasonable notice. The periods of disqualification specified in this section shall commence on the date the determination of the violation is made by the department.

(4) A violation of this section occurs when the person, firm, corporation, partnership, association, or officers commit any one or more of the acts described in subdivision (g).

(5) The department may promulgate rules and regulations for the administration and enforcement of this section and provide for the definition of terms.

CHAPTER 1035

An act to amend Sections 11629.8 and 11629.991 of the Insurance Code, to amend Sections 120222, 120450, and 120451 of the Public Utilities Code, and to amend Sections 505.2, 1655, 1808.1, 4000.37, 4152.5, 4451, 4751, 5600, 5900, 11730, 11738, 12509, 12514, 12810, 12814.6, 16020, 16020.1, 16020.2, 16021, 16054.2, 16056, 22451, and 24604 of, to amend, repeal, and add Section 12804.9 of, to to add and repeal Sections 2408.5 and 16056.1 of, the Vehicle Code, and to amend Section 1 of Chapter 607 of the Statutes of 1999, relating to transportation.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11629.8 of the Insurance Code is amended to read:

11629.8. Notwithstanding the coverage amounts required by Section 16056 of the Vehicle Code, a low-cost automobile policy issued under the pilot program shall satisfy the financial responsibility requirements of Sections 4000.37, 16021, and 16431 of the Vehicle Code.

SEC. 2. Section 11629.991 of the Insurance Code is amended to read:

11629.991. Notwithstanding the coverage amounts required by Section 16056 of the Vehicle Code, a low-cost automobile policy issued under the pilot program shall satisfy the financial responsibility requirements of Sections 4000.37, 16021, and 16431 of the Vehicle Code.

SEC. 2.2. Section 120222 of the Public Utilities Code is amended to read:

120222. Contracts for the purchase of supplies, equipment, and materials in excess of fifty thousand dollars ($50,000) shall be awarded to the lowest responsible bidder submitting a responsive bid after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board. When the expected purchase contract exceeds one thousand dollars ($1,000) and does not exceed fifty thousand dollars ($50,000), the board shall seek a minimum of three quotations, either written or oral, which permit prices and other terms to be compared.

SEC. 2.4. Section 120450 of the Public Utilities Code is amended to read:

120450. Violation of any ordinance, rule, or regulation enacted by the board relating to the nonpayment of a fare on any transit vehicle or in any transit station owned, controlled, or used by the board shall be an infraction punishable by a fine not exceeding seventy-five dollars ($75), except that a violation by a person, after the second conviction under this section, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

SEC. 2.6. Section 120451 of the Public Utilities Code is amended to read:

120451. Violation of any ordinance, rule, or regulation enacted by the board prohibiting unauthorized operation or manipulation of transit facilities owned, controlled, or used by the board, or prohibiting unauthorized tampering or interference with, or loitering in or about, transit facilities owned, controlled, or used by the board, including, but not limited to, transit centers, rail stations, bus shelters, and bus stops on public and private property, is an infraction punishable by a fine not exceeding fifty dollars ($50), except that such a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment not exceeding six months, or by both that fine and imprisonment.

SEC. 3. Section 505.2 of the Vehicle Code is amended to read:

505.2. (a) A ‘‘registration service’’ is a person engaged in the business of soliciting or receiving any application for the registration,

renewal of registration, or transfer of registration or ownership, of any vehicle of a type subject to registration under this code, or of transmitting or presenting any of those documents to the department, when any compensation is solicited or received for the service. ''Registration service'' includes, but is not limited to, a person who, for compensation, processes registration documents, conducts lien sales, or processes vehicle dismantling documents.

(b) ''Registration service'' does not include any of the following:

(1) A person performing registration services on a vehicle acquired by that person for his or her own personal use or for use in the regular course of that person's business.

(2) A person who solicits applications for or sells, for compensation, nonresident permits for the operation of vehicles within this state.

(3) An employee of one or more dealers or dismantlers, or a combination thereof, who performs registration services for vehicles acquired by, consigned to, or sold by the employing dealers or dismantlers.

(4) A motor club, as defined in Section 12142 of the Insurance Code.

(5) A common carrier acting in the regular course of its business in transmitting applications.

SEC. 4. Section 1655 of the Vehicle Code is amended to read:

1655. (a) The director and deputy director of the department, the Deputy Director, Investigations and Audits Division, the Chief, Field Investigations Branch, and the investigators of the department, including rank-and-file, supervisory, and management personnel, shall have the powers of peace officers for the purpose of enforcing those provisions of law committed to the administration of the department or enforcing the law on premises occupied by the department.

(b) Any person designated in subdivision (a) may inspect any vehicle of a type required to be registered under this code, or any component part thereof, in any garage, repair shop, parking lot, used car lot, automobile dismantler's lot, steel mill, scrap metal processing facility, or other establishment engaged in the business of selling, repairing, or dismantling vehicles, or reducing vehicles or the integral parts thereof to their component materials for the purpose of investigating the title and registration of the vehicle, inspecting wrecked or dismantled vehicles, or locating stolen vehicles.

SEC. 5. Section 1808.1 of the Vehicle Code is amended to read:

1808.1. (a) The prospective employer of a driver who drives any vehicle specified in subdivision (k) shall obtain a report showing the driver's current public record as recorded by the department. For purposes of this subdivision, a report is current if it was issued less than 30 days prior to the date the employer employs the driver. The report shall be reviewed, signed, and dated by the employer and maintained at

the employer's place of business until receipt of the pull-notice system report pursuant to subdivisions (b) and (c). These reports shall be presented upon request to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(b) The employer of a driver who drives any vehicle specified in subdivision (k) shall participate in a pull-notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled. As used in this section, participation in the pull-notice system means obtaining a requester code and enrolling all employed drivers who drive any vehicle specified in subdivision (k) under that requester code.

(c) The employer of a driver of any vehicle specified in subdivision (k) shall, additionally, obtain a periodic report from the department at least every 12 months. The employer shall verify that each employee's driver's license has not been suspended or revoked, the employee's traffic violation point count, and whether the employee has been convicted of a violation of Section 23152 or 23153. The report shall be signed and dated by the employer and maintained at the employer's principal place of business. The reports shall be presented upon demand to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(d) Upon the termination of a driver's employment, the employer shall notify the department to discontinue the driver's enrollment in the pull-notice system.

(e) For the purposes of the pull-notice system and periodic report process required by subdivisions (b) and (c), owners, other than owner-operators as defined in Section 34624, and employers who drive vehicles described in subdivision (k) shall be enrolled as if they were employees. Family members and volunteer drivers who drive vehicles described in subdivision (k) shall also be enrolled as if they were employees.

(f) An employer who, after receiving any driving record pursuant to this section, employs or continues to employ as a driver any person against whom a disqualifying action has been taken regarding his or her driving privilege or required driver's certificate, is guilty of a public offense, and upon conviction thereof, shall be punished by confinement in a county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that confinement and fine.

(g) As part of its inspection of bus maintenance facilities and terminals required at least once every 13 months pursuant to subdivision (c) of Section 34501, the Department of the California Highway Patrol shall determine whether each transit operator, as defined in Section 99210 of the Public Utilities Code, is then in compliance with this section and Section 12804.6, and shall certify each operator found to be in compliance. No funds shall be allocated under Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code to a transit operator which the Department of the California Highway Patrol has not certified under this section.

(h) A request to participate in the pull-notice system established by this section shall be accompanied by a fee determined by the department to be sufficient to defray the entire actual cost to the department for the notification service. For the receipt of subsequent reports, the employer shall also be charged a fee established by the department pursuant to Section 1811. Any employer who qualifies under Section 1812 shall be exempt from any fee required under this section. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports to employers by mail or via an electronic delivery method, as required by subdivision (c), on a regular basis without the need for individual requests.

(j) (1) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull-notice system, as otherwise required by subdivision (a). However, the employer of a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a casual driver to drive any vehicle specified in subdivision (k). A report is current if it was issued less than six months prior to the date the employer employs the driver.

(2) For the purposes of this subdivision, a driver is employed as a casual driver when the employer has employed the driver less than 30 days during the preceding six months. ''Casual driver'' does not include any driver who operates a vehicle that requires a passenger transportation endorsement.

(k) This section applies to any vehicle for the operation of which the driver is required to have a class 1, class 2, class A, or class B driver's license, a class C license with a hazardous materials endorsement, or a certificate issued pursuant to Section 2512, 12517, 12519, 12520, 12523, or 12523.5, or any passenger vehicle having a seating capacity of not more than 10 persons, including the driver, operated for compensation by a charter-party carrier of passengers or passenger stage

corporation pursuant to a certificate of public convenience and necessity or a permit issued by the Public Utilities Commission.

(*l*) This section shall not be construed to change the definition of ''employer,'' ''employee,'' or ''independent contractor'' for any purpose.

(m) A motor carrier who contracts with any person to drive any vehicle described in subdivision (k) which is owned by or leased to that motor carrier, shall be subject to subdivisions (a), (b), (c), (d), (f), (j), (k), and (*l*) and the employer obligations therein.

SEC. 5.5. Section 2408.5 is added to the Vehicle Code, to read:

2408.5. (a) The department shall compile traffic collision data on vehicles that meet the criteria set forth in subparagraph (H) of paragraph (3) of subdivision (b) of Section 12804.9 and report its findings to the Legislature on or before April 1, 2003.

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

SEC. 6. Section 4000.37 of the Vehicle Code is amended to read:

4000.37. (a) Upon application for renewal of registration of a motor vehicle, the department shall require that the applicant submit either a form approved by the department, but issued by the insurer, as specified in paragraph (1) or (2), or any of the items specified in paragraph (3), as evidence that the applicant is in compliance with the financial responsibility laws of this state.

(1) For vehicles covered by private passenger automobile liability policies and having coverage as described in subdivisions (a) and (b) of Section 660 of the Insurance Code, or policies and coverages for private passenger automobile policies as described in subdivisions (a) and (b) of that section and issued by an automobile assigned risk plan, the form shall include all of the following:

(A) The primary name of the insured covered by the policy or the vehicle owner, or both.

(B) The year, make, and vehicle identification number of the vehicle.

(C) The name, the National Association of Insurance Commissioners (NAIC) number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(D) The policy or bond number, and the effective date and expiration date of that policy or bond.

(E) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5. For the purposes of this section, policies described in Sections 11629.71 and 11629.91 of the Insurance Code are deemed to meet the requirements of Section 16056.

(2) For vehicles covered by commercial or fleet policies, and not private passenger automobile liability policies, as described in paragraph (1), the form shall include all of the following:

(A) The name and address of the vehicle owner or fleet operator.

(B) The name, the NAIC number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(C) The policy or bond number, and the effective date and expiration date of the policy or bond.

(D) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5 and is a commercial or fleet policy. For vehicles registered pursuant to Article 9.5 (commencing with Section 5300) or Article 4 (commencing with Section 8050) of Chapter 4, one form may be submitted per fleet as specified by the department.

(3) In lieu of evidence of insurance as described in paragraphs (1) and (2), one of the following documents as evidence of coverage under an alternative form of financial responsibility may be provided by the applicant:

(A) An evidence form, as specified by the department, that indicates either a certificate of self-insurance or an assignment of deposit letter has been issued by the department pursuant to Section 16053 or 16054.2.

(B) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

(C) An evidence form that indicates coverage is provided by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code. The evidence form shall include:

(1) The name and address of the vehicle owner or fleet operator.

(2) The name and address of the charitable risk pool providing the policy for the vehicle.

(3) The policy number, and the effective date and expiration date of the policy.

(4) A statement from the charitable risk pool that the policy meets the requirements of subdivision (b) of Section 16054.2.

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

(1) A vehicle for which a certification has been filed pursuant to Section 4604, until the vehicle is registered for operation upon the highway.

(2) A vehicle that is owned or leased by, or under the direction of, the United States or any public entity that is included in Section 811.2 of the Government Code.

(3) A vehicle registration renewal application where there is a change of registered owner.

(4) A vehicle for which evidence of liability insurance information has been electronically filed with the department.

SEC. 6.5. Section 4000.37 of the Vehicle Code is amended to read:

4000.37. (a) Upon application for renewal of registration of a motor vehicle, the department shall require that the applicant submit either a form approved by the department, but issued by the insurer, as specified in paragraph (1), (2), or (3), or any of the items specified in paragraph (4), as evidence that the applicant is in compliance with the financial responsibility laws of this state.

(1) For vehicles covered by private passenger automobile liability policies and having coverage as described in subdivisions (a) and (b) of Section 660 of the Insurance Code, or policies and coverages for private passenger automobile policies as described in subdivisions (a) and (b) of that section and issued by an automobile assigned risk plan, the form shall include all of the following:

(A) The primary name of the insured covered by the policy or the vehicle owner, or both.

(B) The year, make, and vehicle identification number of the vehicle.

(C) The name, the National Association of Insurance Commissioners (NAIC) number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(D) The policy or bond number, and the effective date and expiration date of that policy or bond.

(E) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5. For the purposes of this section, policies described in Sections 11629.71 and 11629.91 of the Insurance Code are deemed to meet the requirements of Section 16056.

(2) For vehicles covered by commercial or fleet policies, and not private passenger automobile liability policies, as described in paragraph (1), the form shall include all of the following:

(A) The name and address of the vehicle owner or fleet operator.

(B) The name, the NAIC number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(C) The policy or bond number, and the effective date and expiration date of the policy or bond.

(D) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5 and is a commercial or fleet policy. For vehicles registered pursuant to Article 9.5 (commencing with Section 5300) or Article 4 (commencing with Section 8050) of Chapter 4, one form may be submitted per fleet as specified by the department.

(3) (A) The director may authorize an insurer to issue a form that does not conform to paragraph (1) or (2) if the director does all of the following:

(i) Determines that the entity issuing the alternate form is or will begin reporting the insurance information required under paragraph (1) or (2) to the department through electronic transmission.

(ii) Determines that use of the alternate form furthers the interests of the state by enhancing the enforcement of the state's financial responsibility laws.

(iii) Approves the contents of the alternate form as providing an adequate means for persons to prove compliance with the financial responsibility laws.

(B) The director may authorize the use of the alternate form in lieu of the forms otherwise required under paragraph (1) or (2) for a period of four years or less and may renew that authority for additional periods of four years or less.

(4) In lieu of evidence of insurance as described in paragraphs (1), (2), and (3) one of the following documents as evidence of coverage under an alternative form of financial responsibility may be provided by the applicant:

(A) An evidence form, as specified by the department, that indicates either a certificate of self-insurance or an assignment of deposit letter has been issued by the department pursuant to Sections 16053 or 16054.2.

(B) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

(C) An evidence form that indicates coverage is provided by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code. The evidence form shall include:

(1) The name and address of the vehicle owner or fleet operator.

(2) The name and address of the charitable risk pool providing the policy for the vehicle.

(3) The policy number, and the effective date and expiration date of the policy.

(4) A statement from the charitable risk pool that the policy meets the requirements of subdivision (b) of Section 16054.2.

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

(1) A vehicle for which a certification has been filed pursuant to Section 4604, until the vehicle is registered for operation upon the highway.

(2) A vehicle that is owned or leased by, or under the direction of, the United States or any public entity that is included in Section 811.2 of the Government Code.

(3) A vehicle registration renewal application where there is a change of registered owner.

(4) A vehicle for which evidence of liability insurance information has been electronically filed with the department.

SEC. 7. Section 4152.5 of the Vehicle Code is amended to read:

4152.5. Except as provided for in subdivision (c) of Section 9553, when California registration is required of a vehicle last registered in a foreign jurisdiction, an application for registration shall be made to the department within 20 days following the date registration became due. The application shall be deemed an original application.

SEC. 8. Section 4451 of the Vehicle Code is amended to read:

4451. The certificate of ownership shall contain all of the following:

(a) Not less than the information required upon the face of the registration card.

(b) Provision for notice to the department of a transfer of the title or interest of the owner or legal owner.

(c) Provision for application for transfer of registration by the transferee.

(d) Provision for an odometer disclosure statement pursuant to subsection (a) of Section 32705 of Title 49 of the United States Code.

SEC. 9. Section 4751 of the Vehicle Code is amended to read:

4751. The department may refuse registration or the renewal or transfer of registration of a vehicle in any of the following events:

(a) If the department is not satisfied that the applicant is entitled thereto under this code.

(b) If the applicant has failed to furnish the department with information required in the application or reasonable additional information required by the department.

(c) If the department determines that the applicant has made or permitted unlawful use of any registration certificate, certificate of ownership, or license plates.

(d) If the vehicle is mechanically unfit or unsafe to be operated or moved on the highways.

(e) If the department determines that a manufacturer or dealer has failed during the current or previous year to comply with the provisions of this code relating to the giving of notice to the department of the transfer of a vehicle during the current or previous year.

(f) If the department determines that a lien exists, pursuant to Section 9800, against one or more other vehicles in which the applicant has an ownership interest.

(g) If the applicant has failed to furnish the department with an odometer disclosure statement pursuant to subsection (a) of Section 32705 of Title 49 of the United States Code.

SEC. 10. Section 5600 of the Vehicle Code is amended to read:

5600. (a) No transfer of the title or any interest in or to a vehicle registered under this code shall pass, and any attempted transfer shall not be effective, until the parties thereto have fulfilled either of the following requirements:

(1) The transferor has made proper endorsement and delivery of the certificate of ownership to the transferee as provided in this code and the transferee has delivered to the department or has placed the certificate in the United States mail addressed to the department when and as required under this code with the proper transfer fee, together with the amount required to be paid under Part 1 (commencing with Section 6001), Division 2 of the Revenue and Taxation Code with respect to the use by the transferee of the vehicle, and thereby makes application for a transfer of registration except as otherwise provided in Sections 5905, 5906, 5907, and 5908.

(2) The transferor has delivered to the department or has placed in the United States mail addressed to the department the appropriate documents for the registration or transfer of registration of the vehicle pursuant to the sale or transfer except as provided in Section 5602.

(b) Whenever a person transfers ownership of a vehicle and is required to disclose the mileage of the vehicle, the department may prescribe a secured form to be used for purposes of the odometer mileage disclosure requirements pursuant to subsection (a) of Section 32705 of Title 49 of the United States Code.

SEC. 11. Section 5900 of the Vehicle Code is amended to read:

5900. (a) Whenever the owner of a vehicle registered under this code sells or transfers his or her title or interest in, and delivers the possession of, the vehicle to another, the owner shall, within five calendar days, notify the department of the sale or transfer giving the date thereof, the name and address of the owner and of the transferee, and the description of the vehicle that is required in the appropriate form provided for that purpose by the department.

(b) Except as otherwise provided in subdivision (c), pursuant to subsection (a) of Section 32705 of Title 49 of the United States Code, the owner shall also notify the department of the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of sale or transfer. However, if the vehicle owner has knowledge that the mileage displayed on the odometer is incorrect, the owner shall indicate on the appropriate form the true mileage, if known, of the vehicle at the time of sale or transfer.

Providing false or inaccurate mileage is not a violation of this subdivision unless it is done with the intent to defraud.

(c) If the registered owner is not in possession of the vehicle that is sold or transferred, the person in physical possession of that vehicle shall give the notice required by subdivisions (a) and (b). If the registered owner sells or transfers the vehicle through a dealer conducting a wholesale motor vehicle auction, the owner shall furnish the information required by subdivisions (a) and (b) to that dealer.

SEC. 12. Section 11730 of the Vehicle Code is amended to read:

11730. The consignment agreement required by Section 11729 shall contain all the following terms, phrases, conditions, and disclosures:

(a) The date the agreement is executed.

(b) All of the following statements:

(1) ''I (We), the undersigned consigner(s), hereby consign and deliver possession of my(our) vehicle, which is a (Year) ____ (Make) ____ (ID#) ____ (License) ____ (State) ____ (Mileage) ____, to (Consignee) _____ (Dealer #) ____ for the sole purpose of selling the vehicle and paying, to the consignor or his or her designee from the proceeds of the sale of the vehicle, the amount agreed upon under terms of this agreement. This agreement is effective and valid only for a period of ____ days from this date.''

(2) ''At the termination of this agreement, the consignee shall return the vehicle to the consignor, or, at the option of both the consignor and consignee, enter into a new agreement.''

(3) ''If the vehicle is sold by the consignee during the term of this agreement, the money due the consignor shall be disbursed within 20 days after the date of sale in accordance with the terms of this agreement. As used in this agreement, a ''sale'' occurs when the consignee either (A) receives the purchase price or its equivalent or executes a conditional sales contract for the vehicle, or (B) when the purchaser takes delivery of the vehicle, whichever occurs first.''

(4) ''The following information shall be completed prior to the signing of this agreement:

Current market value: $____ Source: ____.

Outstanding liens: $____ Lienholder: ____.

(Any difference between the outstanding amount shown and the actual payoff to the lienholder will be credited to the consignor.)

Repairs to be made: $____ Work Order #____.

Moneys to the consignor: ____ percent of sale price, flat fee of $____ or the following specific formula: ____.''

(5) ''Within 20 days after sale, the consignee shall make an accounting to the consignor of all of the following: date of sale, repairs authorized by consignor (supported by work records), exact amount of

any liens payable to lienholders, evidence of payment of any liens, and the total sales price.''

(6) ''The consigned vehicle is delivered to the consignee in trust for the exact terms set forth in this agreement. The consignee agrees to receive this vehicle in trust and not to permit its use for any other purpose other than contained in this agreement without the express written consent of the consignor.''

(7) ''Upon payment of the moneys due the consignor, the consignor agrees to furnish the consignee those documents necessary to transfer the ownership of the vehicle to the purchaser.

Signatures:

Consignor	Date
Address	
Consignee	Date
Address	''

(8) ''NOTICE TO CONSIGNOR: Failure of the consignee to comply with the terms of this agreement may be a violation of statute which could result in criminal or administrative sanctions, or both. If you feel the consignee has not complied with the terms of this agreement, please contact an investigator of the Department of Motor Vehicles.''

SEC. 13. Section 11738 of the Vehicle Code is amended to read:

11738. The brokering agreement required by Section 11736 shall be printed in no smaller than 10-point type and shall contain not less than the following terms, conditions, requirements, and disclosures:

(a) The name, address, license number, and telephone number of the autobroker.

(b) A complete description, including line-make, model, year model, and color, of the vehicle and the desired options.

(c) The following statement:

''The following information shall be completed prior to the signing of this brokering agreement:

Dollar Purchase Price of Vehicle: _____.

Date this agreement will expire if a purchase agreement from a selling dealer is not presented for your signature: _____.

Fee that you will be obligated to pay us, if any: _____.''

(d) One of the following notices, as appropriate, printed in at least 10-point bold type and placed immediately below the statement required by subdivision (c):

(1) ''We do not receive a fee from the selling dealer.''

(2) ''We receive a fee from the selling dealer.''

(e) The following notice on the face of the brokering agreement with a heading in at least 14-point bold type and the text in at least 10-point bold type, circumscribed by a line, that reads as follows:

NOTICE

This is an agreement to provide services; it is not an agreement for the purchase of a vehicle. California law gives you the following rights and protection.

Once you have signed this agreement, you have the right to cancel it and receive a full refund of any money paid, including any brokerage fee you may have paid, under any of the following circumstances:

(1) The final price of the vehicle exceeds the purchase price listed above.

(2) The vehicle is not as described above upon delivery.

(3) This agreement expires prior to your being presented with a selling dealer's purchase agreement.

If you have paid a purchase deposit, you have the right to receive a refund of that deposit at any time prior to your signing a vehicle purchase agreement with a selling dealer. Purchase deposits are limited by law to no more than 2.5 percent of the purchase price of a vehicle and must be deposited by an autobroker or auto buying service in a federally insured trust account. If you are unable to resolve a dispute with your autobroker or auto buying service, please contact an investigator of the Department of Motor Vehicles.

(f) The date the agreement is executed.

(g) The signature of the autobroker and consumer.

SEC. 14. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over and has successfully completed an approved course in automobile driver education and is

taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years or over and is enrolled in an approved driver education course and is at the same time or during the same semester enrolled in an approved driver training course.

(4) Is over the age of 17 years and 6 months.

(b) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 12 months.

(c) Any person, while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), may operate a motor vehicle, other than a motorcycle or a motorized bicycle, when either taking the driver training instruction of a kind referred to in paragraph (3) of subdivision (a) of Section 12814.6, or when practicing that instruction, and when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 25 years of age or over whose driving privilege is not on probation. The age requirement of this subdivision does not apply if the licensed driver is the parent, spouse, or guardian of the permitholder or is a licensed or certified driving instructor. Except as provided in subdivision (d), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(d) Any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a) who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (c), also operate a motorcycle or a motorized bicycle, except that the person shall not operate a motorcycle or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(e) No student shall take driver training instruction unless he or she is at the same time taking driver education instruction or has successfully completed driver education.

(f) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(g) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 15. Section 12514 of the Vehicle Code is amended to read:

12514. (a) Junior permits issued pursuant to Section 12513 shall not be valid for a period exceeding that established on the original request as the approximate date the minor's operation of a vehicle will no longer be necessary. In any event, no permit shall be valid on or after the 18th birthday of the applicant.

(b) The department may revoke any permit when to do so is necessary for the welfare of the minor or in the interests of safety.

(c) If conditions or location of residence, which required the minor's operation of a vehicle, change prior to expiration of the permit, the department may cancel the permit.

(d) Upon a determination that the permittee has operated a vehicle in violation of restrictions, the department shall revoke the permit.

(e) A junior permit is a form of driver's license that shall include all information required by subdivision (a) of Section 12811 except for an engraved picture or photograph of the permittee, and is subject to all provisions of this code applying to driver's licenses, except as otherwise provided in this section and Section 12513.

(f) An instruction permit valid for a period of not more than six months may be issued after eligibility has been established under Section 12513.

(g) The department shall cancel any permit six months from the date of issuance unless the permittee has complied with one of the conditions prescribed by paragraph (3) of subdivision (a) of Section 12814.6.

SEC. 16. Section 12804.9 of the Vehicle Code, as amended by Section 3 of Chapter 722 of the Statutes of 1999, is amended to read:

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

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

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

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

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

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

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

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

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

(1) Class A includes the following:

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

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

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

(2) Class B includes the following:

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

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

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

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

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

(3) Class C includes the following:

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

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

(C) Any housecar.

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

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

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

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

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

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

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

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

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

(H) Any motor vehicle over 4,000 pounds unladen when towing a boat trailer with a gross combination weight rating, as defined in subdivision (g) of Section 15210, of 26,000 pounds or less under the following conditions:

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

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

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

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

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

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

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406 and a motorized scooter described in Section 407.5. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the

medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

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

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

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

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

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

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

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

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

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

SEC. 16.5. Section 12804.9 is added to the Vehicle Code, to read:

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

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

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

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

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

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and

physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

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

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

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

(1) Class A includes the following:

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

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

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

(2) Class B includes the following:

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

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

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

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

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

(3) Class C includes the following:

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

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

(C) Any house car.

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

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

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

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

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

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

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

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

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

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

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

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

(b) of Section 406 and a motorized scooter described in Section 407.5. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

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

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

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

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

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

department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

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

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

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

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

(*l*) This section shall become operative on January 1, 2004.

SEC. 17. Section 12804.9 of the Vehicle Code, as amended by Section 4 of Chapter 722 of the Statutes of 1999, is repealed.

SEC. 18. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) Any conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) Any conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) Any conviction of reckless driving shall be given a value of two points.

(d) (1) Any conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) of Section 23109, subdivision (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) Any conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Except as provided in subdivision (g), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(f) Any accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(g) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) Any conviction of a violation of paragraph (1) or (2) of subdivision (a) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of Section 23136 shall not result in a violation point count.

(h) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

(i) Any conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(j) Any conviction of a violation of Section 27360 within a 37-month period shall be given a value of one point.

SEC. 18.1. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) Any conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) Any conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) Any conviction of reckless driving shall be given a value of two points.

(d) (1) Any conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) of Section 23109, subdivision (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) Any conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Except as provided in subdivision (g), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(f) Any traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(g) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) Any conviction of a violation of paragraph (1) or (2) of subdivision (a) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of Section 23136 shall not result in a violation point count.

(h) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

(i) Any conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(j) Any conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

SEC. 19. Section 12814.6 of the Vehicle Code is amended to read:

12814.6. (a) Notwithstanding any other provision of law, any driver's license issued to a person at least 16 years of age but under 18 years of age shall be issued pursuant to the provisional licensing program contained in this section. The program shall consist of all of the following components:

(1) Upon application for an original license, the applicant shall be issued an instruction permit pursuant to Section 12509. A person who has in his or her immediate possession a valid permit issued pursuant to Section 12509 may operate a motor vehicle, other than a motorcycle or motorized bicycle, subject to Section 12509 only if that person is accompanied by, and under the immediate supervision of, a driver who is 25 years of age or older, who holds a driver's license issued under this code, and whose driving privilege is not on probation. The age requirement of this paragraph does not apply if the licensed driver is the parent, spouse, or guardian of the permitholder or is a licensed or certified driving instructor.

(2) The person shall hold an instruction permit for not less than six months prior to applying for a provisional driver's license.

(3) The person shall have complied with one of the following:

(A) Satisfactory completion of approved courses in automobile driver education and driver training maintained pursuant to provisions of the Education Code in any secondary school of California, or equivalent instruction in a secondary school of another state.

(B) Satisfactory completion of six hours or more of behind-the-wheel instruction by a driving school or an independent driving instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 and either an accredited course in automobile driver education in any

secondary school of California pursuant to provisions of the Education Code or satisfactory completion of equivalent professional instruction acceptable to the department. To be acceptable to the department, the professional instruction shall meet minimum standards to be prescribed by the department, which standards shall be at least equal to the requirements for driver education and driver training contained in the rules and regulations adopted by the State Board of Education pursuant to the Education Code. A person who has complied with this subdivision shall not be required by the governing board of a school district to comply with subparagraph (A) in order to graduate from high school.

(4) The person shall complete 50 hours of supervised driving practice prior to the issuance of a provisional license, which is in addition to any other driver training instruction required by law. Not less than 10 of the required practice hours shall include driving during darkness, as defined in Section 280. Upon application for a provisional license, the person shall submit to the department the certification of a parent, spouse, guardian, or licensed or certified driving instructor that the applicant has completed the required amount of driving practice and is prepared to take the department's driving test. A person without a parent, spouse, guardian, or who is an emancipated minor, may have a licensed driver 25 years of age or older or a licensed or certified driving instructor complete the certification. This requirement does not apply to motorcycle practice.

(5) The person shall successfully complete an examination required by the department. Before retaking a test, the person shall wait for not less than one week after failure of the written test and for not less than two weeks after failure of the driving test.

(b) Commencing July 1, 1998, the provisional driver's license shall be subject to all of the following restrictions:

(1) Except as specified in paragraph (3), during the first six months after issuance of a provisional license the licensee shall not do any of the following unless accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor:

(A) Drive between the hours of 12:00 a.m. and 5:00 a.m.

(B) Transport passengers who are under 20 years of age.

(2) During the second six months after issuance of a provisional license the licensee may transport passengers under the age of 20 years between the hours of 5:00 a.m. and 12:00 a.m. without supervision. This driving time restriction shall not modify or alter any local ordinance that restricts or prohibits cruising during specified proscribed hours. However, the restriction imposed under subparagraph (A) of paragraph (1) shall continue to apply during this period.

(3) A licensee may drive between the hours of 12:00 a.m. and 5:00 a.m. or transport an immediate family member without being accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor, in the following circumstances:

(A) Medical necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from a physician familiar with the condition, containing a diagnosis and probable date when sufficient recovery will have been made to terminate the necessity.

(B) Schooling or school-authorized activities of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the school principal, dean, or school staff member designated by the principal or dean, containing a probable date that the schooling or school-authorized activity will have been completed.

(C) Employment necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the employer, verifying employment and containing a probable date that the employment will have been completed.

(D) Necessity of the licensee or the licensee's immediate family member when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary to transport the licensee or the licensee's immediate family member. The licensee shall keep in his or her possession a signed statement from a parent or legal guardian verifying the reason and containing a probable date that the necessity will have ceased.

(E) The licensee is an emancipated minor.

(c) A law enforcement officer shall not stop a vehicle for the sole purpose of determining whether the driver is in violation of the restrictions imposed under subdivision (b).

(d) (1) Upon a finding that any licensee has violated paragraph (1) or (2) of subdivision (b), the court shall impose one of the following:

(A) Not less than eight hours nor more than 16 hours of community service for a first offense and not less than 16 hours nor more than 24 hours of community service for a second or subsequent offense.

(B) A fine of not more than thirty-five dollars ($35) for a first offense and a fine of not more than fifty dollars ($50) for a second or subsequent offense.

(2) If the court orders community service, the court shall retain jurisdiction until the hours of community service have been completed.

(3) If the hours of community service have not been completed within 90 days, the court shall impose a fine of not more than thirty-five dollars ($35) for a first offense and not more than fifty dollars ($50) for a second or subsequent offense.

(e) No conviction of paragraph (1) or (2) of subdivision (b), when reported to the department, shall be disclosed as otherwise specified in Section 1808 or constitute a violation point count value pursuant to Section 12810.

(f) Any term of restriction or suspension of the driving privilege imposed on a person pursuant to this subdivision shall remain in effect until the end of the term even though the person becomes 18 years of age before the term ends.

(1) The driving privilege shall be suspended when the record of the person shows one or more notifications issued pursuant to Section 40509 or 40509.5. The suspension shall continue until any notification issued pursuant to Section 40509 or 40509.5 has been cleared.

(2) A 30-day restriction shall be imposed when a driver's record shows a violation point count of two or more points in 12 months, as determined in accordance with Section 12810. The restriction shall require the licensee to be accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older, except when operating a class M vehicle, or so licensed, with no passengers aboard.

(3) A six-month suspension of the driving privilege and a one-year term of probation shall be imposed whenever a licensee's record shows a violation point count of three or more points in 12 months, as determined in accordance with Section 12810. The terms and conditions of probation shall include, but not be limited to, both of the following:

(A) The person shall violate no law which, if resulting in conviction, is reportable to the department under Section 1803.

(B) The person shall remain free from accident responsibility.

(g) Whenever action by the department under subdivision (f) arises as a result of a motor vehicle accident, the person may, in writing and within 10 days, demand a hearing to present evidence that he or she was not responsible for the accident upon which the action is based. Whenever action by the department is based upon a conviction reportable to the department under Section 1803, the person has no right to a hearing pursuant to Article 3 (commencing with Section 14100) of Chapter 3.

(h) The department shall require any person whose driving privilege is suspended or revoked pursuant to subdivision (f) to submit proof of financial responsibility as defined in Section 16430. The proof of financial responsibility shall be filed on or before the date of

reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following the date of reinstatement.

(i) Notwithstanding any other provision of this code, the department may issue a distinctive driver's license, which displays a distinctive color or a distinctively colored stripe or other distinguishing characteristic, to persons at least 16 years of age and older but under 18 years of age, and to persons 18 years of age and older but under 21 years of age, so that the distinctive license feature is immediately recognizable. The features shall clearly differentiate between drivers' licenses issued to persons at least 16 years of age or older but under 18 years of age and to persons 18 years of age or older but under 21 years of age.

If changes in the format or appearance of drivers' licenses are adopted pursuant to this subdivision, those changes may be implemented under any new contract for the production of driver's licenses entered into after the adoption of those changes.

(j) The department shall include, on the face of the provisional driver's license, the original issuance date of the provisional driver's license in addition to any other issuance date.

(k) This section shall be known and may be cited as the Brady-Jared Teen Driver Safety Act of 1997.

SEC. 20. Section 16020 of the Vehicle Code is amended to read:

16020. (a) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility pursuant to Section 16021, and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle.

(b) ''Evidence of financial responsibility'' means any of the following:

(1) A form issued by an insurance company or charitable risk pool, as specified by the department pursuant to Section 4000.37.

(2) If the owner is a self-insurer, as provided in Section 16052 or a depositor, as provided in Section 16054.2, the certificate of self-insurance or the assignment of deposit letter issued by the department.

(3) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

(4) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(c) For purposes of this section, ''evidence of financial responsibility'' also may be obtained by a law enforcement officer from the electronic reporting system established by the department.

(d) For purposes of this section, ''evidence of financial responsibility'' also includes any of the following:

(1) The number of an insurance policy or surety bond that was in effect at the time of the accident or at the time that evidence of financial responsibility is required to be provided pursuant to Section 16028, if that information is contained in the vehicle registration records of the department.

(2) The identifying motor carrier of property permit number issued by the Department of the California Highway Patrol to the motor carrier of property as defined in Section 34601, and displayed on the motor vehicle in the manner specified by the Department of the California Highway Patrol.

(3) The identifying number issued to the household goods carrier, passenger stage carrier, or transportation charter party carrier by the Public Utilities Commission and displayed on the motor vehicle in the manner specified by the commission.

(4) The identifying number issued by the Interstate Commerce Commission or its successor federal agency, if proof of financial responsibility must be presented to the issuing agency as part of the identification number issuance process, and displayed on the motor vehicle in the manner specified by the issuing agency.

(e) Evidence of financial responsibility does not include any of the identification numbers in paragraph (1), (2), (3), or (4) of subdivision (d) if the carrier is currently suspended by the issuing agency for lack or lapse of insurance or other form of financial responsibility.

SEC. 21. Section 16020.1 of the Vehicle Code is amended to read:

16020.1. (a) On and after January 1, 2004, Section 4000.37 does not apply to vehicle owners with a residence address in the County of Los Angeles at the time of registration renewal.

(b) On and after January 1, 2004, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the County of Los Angeles.

SEC. 22. Section 16020.2 of the Vehicle Code is amended to read:

16020.2. (a) On and after January 1, 2004, Section 4000.37 does not apply to vehicle owners with a residence address in the City and County of San Francisco at the time of registration renewal.

(b) On and after January 1, 2004, subdivisions subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the City and County of San Francisco.

SEC. 23. Section 16021 of the Vehicle Code is amended to read:

16021. Financial responsibility of the driver or owner is established if the driver or owner of the vehicle involved in an accident described in Section 16000 is:

(a) A self-insurer under the provisions of this division.

(b) An insured or obligee under a form of insurance or bond which complies with the requirements of this division and which covers the driver for the vehicle involved in the accident.

(c) The United States of America, this state, any municipality or subdivision thereof, or the lawful agent thereof.

(d) A depositor in compliance with subdivision (a) of Section 16054.2.

(e) A obligee under a policy issued by a charitable risk pool which complies with subdivision (b) of Section 16054.2.

(f) In compliance with the requirements authorized by the department by any other manner which effectuates the purposes of this chapter.

SEC. 24. Section 16054.2 of the Vehicle Code is amended to read:

16054.2. Proof may also be established by any of the following:

(a) By depositing with the department cash in the amount specified in Section 16056.

(b) By providing evidence of a liability policy covering the operation of the vehicle that (A) is issued by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code and (B) the policy is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, to a limit of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(c) By any other manner authorized by the department which effectuates the purposes of this chapter.

SEC. 25. Section 16056 of the Vehicle Code is amended to read:

16056. (a) No policy or bond shall be effective under Section 16054 unless issued by an insurance company or surety company admitted to do business in this state by the Insurance Commissioner, except as provided in subdivision (b) of this section, nor unless the policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than

five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under Section 16054 with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing the policy or bond is admitted to do business in this state, or if the company is not admitted to do business in this state, unless it executes a power of attorney authorizing the department to accept service on its behalf of notice or process in any action upon the policy or bond arising out of an accident mentioned in subdivision (a).

(c) Any nonresident driver whose driving privilege has been suspended or revoked based upon an action that requires proof of financial responsibility may, in lieu of providing a certificate of insurance from a company admitted to do business in California, provide a written certificate of proof of financial responsibility that is satisfactory to the department, covers the operation of a vehicle in this state, meets the liability requirements of this section, and is from a company that is admitted to do business in that person's state of residence.

SEC. 26. Section 16056.1 is added to the Vehicle Code, to read:

16056.1. (a) Notwithstanding the coverage limits specified in Section 16056, an automobile insurance policy described in Sections 11629.71 and 11629.91 of the Insurance Code shall be effective under Section 16054 when issued by an insurance company admitted to do business in this state by the Insurance Commissioner and the policy is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars ($10,000) because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than twenty thousand dollars ($20,000) because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property, to a limit of not less than three thousand dollars ($3,000) because of injury to or destruction of property of others in any one accident.

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

SEC. 27. Section 22451 of the Vehicle Code is amended to read:

22451. (a) The driver of any vehicle or pedestrian approaching a railroad or rail transit grade crossing shall stop not less than 15 feet from the nearest rail and shall not proceed until he or she can do so safely, whenever the following conditions exist:

(1) A clearly visible electric or mechanical signal device or a flagman gives warning of the approach or passage of a train or car.

(2) An approaching train or car is plainly visible or is emitting an audible signal and, by reason of its speed or nearness, is an immediate hazard.

(b) No driver or pedestrian shall proceed through, around, or under any railroad or rail transit crossing gate while the gate is closed.

(c) Whenever a railroad or rail transit crossing is equipped with an automated enforcement system, a notice of a violation of this section is subject to the procedures provided in Section 40518.

SEC. 28. Section 24604 of the Vehicle Code is amended to read:

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

SEC. 29. Section 1 of Chapter 607 of the Statutes of 1999 is amended to read:

Section 1. The Department of Transportation shall extend the completion date to June 30, 2002, for the Environmental Enhancement and Mitigation (EEM) Projects for all of the following entities:

(a) Fallbrook Land Conservancy (Project No. 96-135; Agreement No. 11-96-54).

(b) City of Diamond Bar (Project No. 96-39; Agreement No. 07-96-37).

(c) Redwood Action Agency (Agreement No. 1-96-22).

(d) Cambria Community Services District (Project No. 96-28).

(e) County of San Luis Obispo, General Services Department/Parks Department (Project No. 96-92).

(f) Midpeninsula Regional Open Space District (Project No. 94-99; Agreement Nos. 04-94-15 and 04-95-09).

(g) East Bay Regional Park District (Project No. 98-25; Agreement No. 04-98-08.

SEC. 30. The City of Napa may transfer to the Department of Transportation, at no cost to the department, any property acquired by the city for completion of the Trancas Interchange Project in that city that is no longer required for completion of the project, if the city and the department enter into an agreement that contains all of the following conditions:

(a) After completion of the project, the department shall combine the property with any excess properties on the east side of State Highway Route 29 acquired by the city and the state for the project and shall market and sell the combined package for a fair market price in accordance with established real estate practices.

(b) The department shall segregate all net proceeds from the sale of the combined properties, and the department shall use those proceeds to defray the costs of the project.

SEC. 31. Section 6.5 of this bill incorporates amendments to Section 4000.37 of the Vehicle Code proposed by both this bill and SB 1996. 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 4000.37 of the Vehicle Code, and (3) this bill is enacted after SB 1996, in which case Section 6 of this bill shall not become operative.

SEC. 32. Section 18.1 of this bill incorporates amendments to Section 12810 of the Vehicle Code proposed by both this bill and SB 567. 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 12810 of the Vehicle Code, and (3) this bill is enacted after SB 567, in which case Section 18 of this bill shall not become operative.

SEC. 33. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1036

An act to amend Sections 16500, 16501, 16600, and 53635 of the Government Code, relating to government funds.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 16500 of the Government Code is amended to read:

16500. As used in this chapter, ‘‘eligible bank’’ means a state or national bank located in this state, selected by the Treasurer for the

safekeeping of money belonging to or in the custody of the state, that has received an overall rating of not less than ''satisfactory'' in its most recent evaluation by the appropriate federal financial supervisory agency of the bank's record of meeting the credit needs of the state's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code. An eligible bank is eligible to receive deposits only to the extent that it furnishes the security required by this chapter.

SEC. 2. Section 16501 of the Government Code is amended to read:

16501. Under the conditions as the Treasurer with the approval of the Director of Finance may establish, the Treasurer may deposit money in banks outside this state when the banks are fiscal agents of the state or custodians of securities owned by the state, if the banks have an overall rating of not less than ''satisfactory'' in their most recent evaluation by the appropriate federal financial supervisory agency of the banks' record of meeting the credit needs of the communities in which the bank is located, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code.

SEC. 3. Section 16600 of the Government Code is amended to read:

16600. (a) As used in this chapter, the following definitions shall apply:

(1) ''Eligible savings and loan association'' means a state or federal savings association, as defined in Section 5102 of the Financial Code, located in this state, insured by the Federal Savings and Loan Insurance Corporation, and selected by the Treasurer for the safekeeping of money belonging to or in the custody of the state. An ''eligible savings and loan association'' must have received an overall rating of not less than ''satisfactory'' in its most recent evaluation by the appropriate federal financial supervisory agency of the association's record of meeting the credit needs of the state's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code.

(2) ''Eligible credit union'' means a state or federal credit union located in this state, insured by the National Credit Union Administration, and selected by the Treasurer for the safekeeping of money belonging to or in the custody of the state.

(b) An eligible savings and loan association or credit union is eligible to receive deposits only to the extent it furnishes the security required by this chapter.

SEC. 3. Section 53635 of the Government Code is amended to read:

53635. As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for

safekeeping in state or national banks, savings associations or federal associations, credit unions, or federally insured industrial loan companies in this state selected by the treasurer or other official having the legal custody of the money; or, unless otherwise directed by the legislative body pursuant to Section 53601, may be invested in the investments set forth below. To be eligible to receive local agency money, a bank, savings association, federal association, or federally insured industrial loan company shall have received an overall rating of not less than ''satisfactory'' in its most recent evaluation by the appropriate federal financial supervisorial agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code. A local agency purchasing or obtaining any securities described in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of all the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book-entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book-entry account may be used for book-entry delivery. For purposes of this section, ''counterparty'' means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase.

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal

Home Loan Bank, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus funds which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of ''prime'' quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an ''A'' or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's money or money in its custody, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. ''Dollar-weighted average maturity'' means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of

deposit do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638. For purposes of this section, the legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from depositing or investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or an employee of the administrative officer, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements, or securities lending agreements of any securities authorized by this section, so long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements or securities lending agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to repurchase agreement on December 31, 1994, and was sold using a reverse repurchase agreement or securities lending agreement on December 31, 1994.

(B) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale; the total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a

security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement or securities lending agreement may not be entered into with securities not sold on a reverse repurchase agreement or securities lending agreement and purchased, or committed to purchase, prior to that date, as a means of financing or paying for the security sold on a reverse repurchase agreement or securities lending agreement, but may only be entered into with securities owned and previously paid for a minimum of 30 days prior to the settlement of the reverse repurchase agreement or securities lending agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, on securities originally purchased subsequent to December 31, 1994, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security. Reverse repurchase agreements or securities lending agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements or securities lending agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6) (A) ''Repurchase agreement'' means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book-entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) ''Securities,'' for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.

(D) ''Securities lending agreement'' means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement or securities lending agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated ''A'' or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and that comply with the investment restrictions of this article and Article 1 (commencing with Section 53600). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 and following).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(m) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an ''A'' or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of ''AA'' or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

CHAPTER 1037

An act relating to the Grant Joint Union High School District.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. (a) Any school district that succeeds the Grant Joint Union High School District shall do each of the following:

(1) Accept, subject to schoolsite capacity, pupils in grades 7 to 12, inclusive, who apply to transfer to that school district from any other school district that succeeds the Grant Joint Union High School District. Priority for transfer shall be given as follows, with random lotteries to choose between pupils in like priority ranks:

(A) First priority shall be given to current pupils at the schoolsite.

(B) Second priority shall be given to residents of the schoolsite attendance area.

(C) Third priority shall be given to siblings of current pupils, if transfer of the siblings would mitigate schoolsite segregation.

(D) Fourth priority shall be given to pupils whose transfer would mitigate schoolsite segregation.

(E) Fifth priority shall be given to siblings of current pupils, regardless of whether transfer of the siblings would mitigate schoolsite segregation.

(F) Sixth priority shall be given to pupils residing in the district attendance area.

(G) Seventh priority shall be given to other pupils not described in subparagraphs (A) to (F), inclusive.

(2) (A) Specify within the voluntary desegregation program established pursuant to Section 42249 and subdivision (a) of Section 42249.6, subject to the availability of funding therefor, that first priority for expenditure of funds provided for purposes of the program shall be the provision of home-to-school transportation for pupils who transfer to the school district pursuant to paragraph (1) at no cost to the pupils.

(B) If funding provided pursuant to subdivision (a) of Section 42249.6 is insufficient to provide free home-to-school transportation for all pupils who transfer to the school district, first priority for free home-to-school transportation shall be given to pupils eligible to receive free or reduced-price lunches. If funding is insufficient to fully fund home-to-school transportation for the pupils eligible to receive free or reduced-price lunches, funding shall be prorated among the pupils eligible to receive free or reduced-price lunches.

(C) Any school district that succeeds the Grant Joint Union High School District shall use, for purposes of this paragraph, the funding made available pursuant to Section 42249.6.

(3) Guarantee that any person formerly employed by the Grant Joint Union High School District who becomes an employee of a school district that succeeds the Grant Joint Union High School District shall retain all seniority that the employee earned in the Grant Joint Union High School District.

(b) Any person who becomes an employee to any school district that succeeds Grant Joint Union High School District due to unification shall retain all seniority that the employee earned in the Grant Joint Union High School District.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable to the Grant Joint Union High School District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 3. 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 1038

An act to add Article 2.7 (commencing with Section 92615) to Chapter 6 of Part 57 of the Education Code, relating to postsecondary education.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Article 2.7 (commencing with Section 92615) is added to Chapter 6 of Part 57 of the Education Code, to read:

Article 2.7. Economic Legacy of Slavery in California

92615. (a) The Legislature requests that the Regents of the University of California assemble a colloquium of scholars to draft a research proposal to analyze the economic benefits of slavery that accrued to owners and the businesses, including insurance companies and their subsidiaries, that received those benefits. The colloquium shall draw on the resources and knowledge of historians and other scholars from across the nation as well as California, and interested parties shall also be invited to participate.

(b) As resources allow, the State Library shall participate in the effort required by this section. The State Library shall examine the economic legacy of slavery in California, including forced slavery, chattel slavery, and indentured servitude.

(c) The Legislature further requests that the Regents of the University of California make recommendations to the Legislature regarding the colloquium's findings on or before January 1, 2002.

CHAPTER 1039

An act to add Title 1.81 (commencing with Section 1798.80) to Part 4 of Division 3 of the Civil Code, relating to customer records.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Title 1.81 (commencing with Section 1798.80) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81. CUSTOMER RECORDS

1798.80. The following definitions apply to this title:

(a) ''Business'' means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records.

(b) ''Records'' means any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. ''Records'' does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(c) ''Customer'' means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(d) ''Individual'' means a natural person.

(e) ''Personal information'' means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information.

1798.81. A business shall take all reasonable steps to destroy, or arrange for the destruction of a customer's records within its custody or control containing personal information which is no longer to be retained by the business by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

1798.82. (a) Any customer injured by a violation of this title may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this title may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

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CHAPTER 1040

An act to amend Sections 25519 and 25523 of, and to repeal Section 25524 of, the Public Resources Code, and to add Sections 393 and 454.1 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

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

(a) Reliable, reasonably priced electricity service is and always has been essential for California's economic growth and for the health and welfare of its citizens.

(b) To improve the reliability and cost of electricity service in California, Chapter 854 of the Statutes of 1996 (hereafter AB 1890) restructured the state's electricity industry to allow market-based competition in the supply of electric power and created the Independent System Operator to ensure reliability, efficiently operate the statewide transmission system, and ensure that necessary new transmission capacity was planned for and constructed.

(c) Prior to electric industry restructuring, California had experienced a decade-long hiatus in powerplant construction that, in conjunction with strong, population-driven electricity demand growth, had begun to jeopardize electric system reliability.

(d) The passage of AB 1890 ended this construction hiatus and stimulated private developers to file an unprecedented number of applications to build new, environmentally superior merchant powerplants in California.

(e) However, because these new powerplants will not be completed until 2002 or 2003, the state's electric system reliability will remain vulnerable during the next few years during periods when California and its neighboring states simultaneously experience very hot weather.

(f) This vulnerability will be exacerbated, in the event of a drought, by California's dependence on rainfall-driven hydroelectric power for over 20 percent of its annual electricity requirements.

(g) Adequate generation, transmission, and consumer-demand responsiveness alternatives are critical to managing the vulnerability of the state's electric system and ensuring reliable, reasonably priced, electricity.

(h) Therefore all of the following are necessary:

(1) Timely and efficient public processes for siting, licensing, and interconnecting new generation and transmission facilities.

(2) Providing tools and information to the state's electricity consumers to enable them to manage their energy use during periods when electricity is most costly.

(3) Equipping public and private institutions that protect the interests of California's citizens with the tools and authority they need to facilitate the timely development of required physical and policy infrastructure.

(i) This act is intended to ensure that needed processes and institutional capabilities are in place so California's citizens and businesses will continue to be assured reliable, reasonably priced, electricity service. Specifically, this bill is intended to do all of the following:

(1) Expedite the deployment of new in-state electric generation capacity.

(2) Expedite the development of necessary transmission capacity identified by the Independent System Operator.

(3) Expedite the development of necessary distribution capacity identified by the Public Utilities Commission.

(4) Maximize the potential benefits of energy conservation by facilitating the deployment of appropriate metering and communication and control technologies through the distribution system.

(j) The Legislature further finds and declares all of the following:

(1) There is a need to establish an electricity consumer information infrastructure that will provide electricity consumption information to residential and small commercial customers to help them better manage their electricity use and costs and improve the demand responsiveness of the electricity market.

(2) A fundamental tool residential and small electricity consumers require to better manage their electricity use is real-time information about their electricity consumption. Currently, the only electricity usage information consumers have is a monthly bill that summarizes historical electricity consumption. Real-time electricity usage information is required for consumers to understand the relationship between their current activities and the amount of electricity they are consuming. However, at present, few consumers have technology installed to monitor their electricity consumption on a real-time basis.

(3) Technology exists that could help consumers acquire the real-time information they would need to understand and manage their electricity consumption. However, the current stock of installed electricity meters is not capable of allowing ready access to this information.

(4) It may be possible to economically retrofit or, in certain cases, replace the current stock of electricity meters to allow real-time usage information to be made available to consumers through a standard output interface. A standard output interface would allow consumers to

purchase a variety of energy information and management technologies that would meet their individual energy management objectives.

(5) Today, no energy information and management technologies are commercially available to the small consumer market at a cost low enough to encourage participation. However, the ubiquitous availability of standard electricity usage information at a standard output interface, along with rates that reward customers for managing their electricity usage and costs, will provide an incentive to customers to change their usage patterns and to third party providers to develop value-added technological solutions to help consumers use their electricity usage information to manage their electricity consumption and meet their individual energy management objectives and improve the demand responsiveness of the electricity market.

(k) The Legislature further finds and declares all of the following:

(1) The electric facilities owned by electrical corporations that are used in California for the transmission of electric energy at high voltages, whether or not in interstate commerce, are facilities essential to the well-being of California residents and businesses.

(2) It is in the public interest to reconfigure and add transfer and replacement capacity to electric transmission facilities to facilitate competition in electric generation markets, ensure open, nondiscriminatory access to all buyers and sellers of electricity, to assure all buyers and sellers of electricity that they will receive comparable service, and to ensure continued reliability of the transmission grid.

(3) Reasonable expenditures by electrical corporations to plan, design, and engineer reconfigurations, replacements, or expansions of transmission facilities are in the public interest, and are deemed prudent if made for the purpose of facilitating competition in electric generation markets, ensuring open access and comparable service, or maintaining or enhancing reliability, whether or not expenditures are for transmission facilities that become operational.

SEC. 2. Section 25519 of the Public Resources Code is amended to read:

25519. (a) In order to obtain certification for a site and related facility, an application for certification of the site and related facility shall be filed with the commission. The application shall be in a form prescribed by the commission and shall be for a site and related facility that has been found to be acceptable by the commission pursuant to Section 25516, or for an additional facility at a site that has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility,

if there is no suitable alternative for the site and related facility that was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.

(b) The commission, upon its own motion or in response to the request of any party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision (i), that it determines is reasonably necessary to make any decision on the application.

(c) The commission shall be the lead agency as provided in Section 21165 for all projects that require certification pursuant to this chapter and for projects that are exempted from such certification pursuant to Section 25541. Unless the commission's regulatory program governing site and facility certification and related proceedings are certified by the Resources Agency pursuant to Section 21080.5, an environmental impact report shall be completed within one year after receipt of the application. If the commission prepares a document or documents in the place of an environmental impact report or negative declaration under a regulatory program certified pursuant to Section 21080.5, any other public agency that must make a decision that is subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000), on a site or related facility, shall use the document or documents prepared by the commission in the same manner as they would use an environmental impact report or negative declaration prepared by a lead agency.

(d) If the site and related facility specified in the application is proposed to be located in the coastal zone, the commission shall transmit a copy of the application to the California Coastal Commission for its review and comments.

(e) If the site and related facility specified in the application is proposed to be located in the Suisun Marsh or the jurisdiction of the San Francisco Bay Conservation and Development Commission, the commission shall transmit a copy of the application to the San Francisco Bay Conservation and Development Commission for its review and comments.

(f) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Those local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(g) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is proposed to be located. The commission shall transmit a copy of the application to each federal and state agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities and to the Attorney General.

(h) Local and state agencies having jurisdiction or special interest in matters pertinent to the proposed site and related facilities shall provide their comments and recommendations on the project within 180 days of the date of filing of an application.

(i) The adviser shall require that adequate notice is given to the public and that the procedures specified by this division are complied with.

(j) For any proposed site and related facility requiring a certificate of public convenience and necessity, the commission shall transmit a copy of the application to the Public Utilities Commission and request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of the proposed site and related facility. If the commission requires modification of the proposed facility, the commission shall consult with the Public Utilities Commission regarding the economic, financial, rate, system reliability, and service implications of those modifications.

(k) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but which it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each agency. The commission shall request any relevant laws, ordinances, or regulations that an agency has promulgated or administered.

(*l*) An application for certification of any site and related facilities shall contain a listing of every federal agency from which any approval or authorization concerning the proposed site is required, specifying the approvals or authorizations obtained at the time of the application and the schedule for obtaining any approvals or authorizations pending.

SEC. 3. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section

30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d) (1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant prior to the commission's licensing of the project, to the extent that the proposed facility requires emission offsets to comply with local, regional, state, or federal air quality standards.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(g) In the case of a facility, other than a resource recovery facility subject to subdivision (f), specific conditions requiring the facility to be

monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

SEC. 4. Section 25524 of the Public Resources Code is repealed.

SEC. 5. Section 393 is added to the Public Utilities Code, to read:

393. (a) The commission shall conduct a pilot study of the residential and small commercial customers of each electrical corporation, where the rate level established in subdivision (a) of Section 368 is no longer in effect, to determine the relative value to ratepayers of various information, rate design, and metering innovations for helping residential and small commercial customers better manage their electricity use. The commission shall compare the net benefits, including, but not limited to, all of the following approaches:

(1) The retrofit or replacement of residential and small commercial meters to provide real-time usage information to a standard output interface that is connected to a visual display module within the customer's home or business that presents information, at minimum, on current usage and historic usage. The commission may also test the effects of providing greater amounts of information display capability including, but not limited to, historic usage and estimated aggregated costs for the billing period, associated with the customer's bundled rate structure. The standard output interface of the meter must be multiply accessible to allow the installation by the customer, an electrical corporation, or a registered energy service provider of energy information-based energy management applications.

(2) The replacement of residential and small commercial meters with time-of-use meters that distinguish and measure peak and off-peak energy use. Subject to the approval of the commission, electrical corporations shall offer a rate schedule to customers that differentially price seasonal on-peak, mid-peak, and off-peak energy use that reflects the electrical corporation's actual energy cost. The meters used shall have the same standard usage information output interface as in paragraph (1).

(3) The replacement of residential and small commercial meters with meters that facilitate the offering of hourly real-time pricing. Subject to the approval of the commission, electrical corporations shall offer a rate schedule to customers that prices electricity usage at the electrical corporation's hourly cost. The meters used shall have the same standard usage information output interface as in paragraph (1) .

(b) The commission shall ensure that sufficient valid randomized customer use data, normalized for weather, occupancy, energy cost

differences and other potentially confounding factors, are collected to respond to, but are not limited to, all of the following questions:

(1) To what extent is the real-time availability of customer usage information to customers sufficient to bring about a significant change in customer energy consumption behavior?

(2) To what extent is the availability of customer usage information to customers sufficient to stimulate innovation in energy information-based energy management applications?

(3) What is the difference in energy consumption behavior between customers that have enhanced access to energy consumption information and those who have time-of-use rates?

(4) Do the differences in usage and net cost savings, if any, between customers who have enhanced energy information and those who have time-of-use rates justify the broader offering of time-of-use metering capability?

(5) What is the difference in energy consumption behavior between customers who consume electricity under hourly real-time pricing and customers who either have enhanced information access or time-of-use pricing? Does the value of these differences justify the broader offering of hourly real-time pricing?

(6) What issues should be addressed prior to systemwide deployment?

(c) In conducting the pilot study, the commission shall ensure that all of the following study conditions are observed:

(1) No more than the minimum number of customers required to provide a statistically valid sample for a customer group in a pilot study as required by subdivision (a) are included. The aggregate total number of customers participating in a customer group in a pilot study may not exceed 3 percent of the electrical corporation's customers.

(2) Customers from each electrical corporation are selected from comparable geographic areas, from a variety of climate zones, and from a range of socioeconomic circumstances. In addition, control groups of customers shall be established for each study against whom the behavior of the study group participants may be compared.

(3) No customer is required to participate in a pilot study. However, customer rates of participation and reasons for nonparticipation for each study condition shall be monitored and incorporated in the study results, as appropriate.

(4) The offerings for the customers in the service territories of each electrical corporation that participates in a pilot study required by subdivision (a) are identical among electrical corporations to allow the comparison of data and results. However, electrical corporations may test alternative technological solutions, not including those relating to the standard usage information output interface specified in subdivision

(e), to offer hourly real-time pricing for the pilot study in paragraph (3) of subdivision (a).

(5) Notwithstanding paragraph (4), the commission may waive the requirement imposed by that paragraph, or otherwise alter a pilot study, if the commission finds that it is in the public interest.

(6) All interested energy service providers and equipment manufacturers are included in the design and implementation of the pilot study to ensure that its results may be used to guide the subsequent deployment of the appropriate customer usage information infrastructure.

(d) The commission shall report to the Legislature on the initial results of the pilot study on or before March 31, 2002. The commission shall report on the results of the study for electrical corporations that continue to be under the rate level established in subdivision (a) of Section 368 at the effective date of this act within 15 months from the time when that rate level is no longer in effect.

(e) The study data shall be available to the public. The data shall be provided in a way that does not reveal customer-specific information.

(f) The standard usage information output interface used in pilot study elements set forth in paragraphs (1) to (3), inclusive, of subdivision (a) shall meet all of the following specifications:

(1) All electrical corporation retrofits or meter replacements shall conform to the same American National Standards Institute, Institute of Electrical and Electronics Engineers or other standard, as appropriate, and provide the same standard output interface.

(2) The technology selected shall be the most cost-effective, including its use of electricity on a life-cycle basis.

(3) The standard output interface selected shall allow a customer's data to be multiply accessed in a secure and protected manner.

(4) The standard output interface shall be installed in a way that does not compromise customer or worker safety or the integrity or accuracy of the meter.

(5) Because some older vintage meters cannot be readily retrofitted, the decision regarding whether to retrofit or replace a meter must be made on the basis of cost-effectiveness.

(6) Access by electrical corporations and third-party providers to the usage information output interface shall be at the sole discretion of the customer, except to the extent that the customer enters into a billing relationship with an electrical corporation or energy service provider.

(7) To ensure customer privacy, unless specifically authorized by the customer, information based upon customer data may not be used for any commercial purpose.

(8) Customers receiving service under the California Alternative Rates for Energy program under Section 739.1 do not pay a higher

distribution rate attributable to participating in any of the pilot studies in subdivision (a).

(g) The commission shall allow electrical corporations to include in their distribution rates the reasonable investment and operating , installing, accounting, and evaluating costs of the pilot studies, those costs to be allocated only among the customer classes participating in the study.

SEC. 6. Section 454.1 is added to the Public Utilities Code, to read:

454.1. (a) Reasonable expenditures by transmission owners that are electrical corporations to plan, design, and engineer reconfiguration, replacement, or expansion of transmission facilities are in the public interest and are deemed prudent if made for the purpose of facilitating competition in electric generation markets, ensuring open access and comparable service, or maintaining or enhancing reliability, whether or not these expenditures are for transmission facilities that become operational.

(b) The commission and the Electricity Oversight Board shall jointly facilitate the efforts of the state's transmission owning electrical corporations to obtain authorization from the Federal Energy Regulatory Commission to recover reasonable expenditures made for the purposes stated in subdivision (a).

(c) Nothing in this section alters or affects the recovery of the reasonable costs of other electric facilities in rates pursuant to the commission's existing ratemaking authority under this code or pursuant to the Federal Power Act (41 Stat. 1063; 16 U.S.C. Secs. 791a, et seq.). The commission may periodically review and adjust depreciation schedules and rates authorized for an electric plant that is under the jurisdiction of the commission and owned by electrical corporations and periodically review and adjust depreciation schedules and rates authorized for a gas plant that is under the jurisdiction of the commission and owned by gas corporations, consistent with this code.

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.

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CHAPTER 1041

An act to amend Section 385 of, and to add Section 9607 to, the Public Utilities Code, and to amend Section 21100 of the Water Code, relating to public utilities.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. (a) It is the intent of the Legislature to encourage irrigation districts that provide retail electric service, to consult with community advisory boards comprised of community members representing low-income customers in order to implement the low-income programs pursuant to paragraph (4) of subdivision (a) of Section 385 of the Public Utilities Code. These low-income programs include, but are not limited to, rate discounts for low-income customers and nonrate discount low-income energy efficiency programs.

(b) It is the intent of the Legislature to encourage irrigation districts to work with community-based organizations, community action agencies, or community-based weatherization providers to implement these programs. It is the intent of the Legislature that irrigation districts adopt low-income programs by July 1, 2001.

SEC. 2. Section 385 of the Public Utilities Code is amended to read:

385. (a) Each local publicly owned electric utility shall establish a nonbypassable, usage based charge on local distribution service of not less than the lowest expenditure level of the three largest electrical corporations in California on a percent of revenue basis, calculated from each utility's total revenue requirement for the year ended December 31, 1994, and each utility's total annual expenditure under paragraphs (1), (2), and (3) of subdivision (c) of Section 381 and Section 382, to fund investments by the utility and other parties in any or all of the following:

(1) Cost-effective demand-side management services to promote energy efficiency and energy conservation.

(2) New investment in renewable energy resources and technologies consistent with existing statutes and regulations which promote those resources and technologies.

(3) Research, development and demonstration programs for the public interest to advance science or technology which is not adequately provided by competitive and regulated markets.

(4) Services provided for low-income electricity customers, including, but not limited to, energy efficiency services, education, weatherization, and rate discounts.

(b) Each local publicly owned electric utility that has not implemented programs for low-income electricity customers including targeted energy efficiency services and rate discounts based upon the income level of the customer, or completed an assessment of need for those programs, on or before December 31, 2000, shall perform a needs assessment for the programs described in paragraph (4) of subdivision (a) and shall hold one or more public meetings, after notice, to review the findings of the needs assessment. Following the public meetings, the governing body of the local publicly owned electric utility shall determine the amount of the total funds collected pursuant to this section to be allocated to low-income programs, including, but not limited to, targeted energy efficiency services, education, weatherization, and rate discounts. In making its decision on the need for the programs, the governing body shall consider all of the following:

(1) The number and income level of low-income customers that reside in the service area of the utility.

(2) The availability of home weatherization services to low-income customers pursuant to Section 2790.

(3) The availability of in-home energy efficiency education in the utility's service area.

(4) Other factors that may indicate a need for low-income services.

(c) Following a determination pursuant to subdivision (b) that low-income services are needed, the local publicly owned utility shall promptly implement or expand those programs. The local publicly owned electric utility shall work with existing weatherization providers to implement energy efficiency, education, and weatherization programs.

SEC. 3. Section 9607 is added to the Public Utilities Code, to read:

9607. (a) Notwithstanding Section 9604, for purposes of this section, ''district'' means an irrigation district furnishing electric services formed pursuant to the Irrigation District Law as set forth in Division 11 (commencing with Section 20500) of the Water Code.

(b) Notwithstanding any other provision of law, a district may not construct, lease, acquire, or operate facilities for the purpose of serving retail electric customers located in the service territory of an electrical corporation or a local publicly owned electric utility unless the district provides to the customers of the electric corporation or local publicly owned utility public purpose programs, universal service, customer protection, and environmental policies regarding distribution facilities that are comparable to those of the current distribution service providers.

(c) Prior to the construction, lease, acquisition, or operation of facilities for the purpose of serving retail electric customers located in the service territory of an electrical corporation or a local publicly owned

electric utility, a district shall certify by ordinance, consistent with the needs determination provided for in Section 385, all of the following:

(1) The district has established and funded public purpose and low-income programs in accordance with Section 385.

(2) The district will provide universal service to all retail customers who request service within reasonable physical proximity to the district's distribution or transmission wires and poles allowing for line extensions and service, at published tariff rates and on a just, reasonable, and nondiscriminatory basis, comparable to that provided by the current distribution service provider.

(3) The district will provide consumer protection and direct transaction provisions comparable to those established for the current distribution service provider and the district has established environmental policies to minimize or eliminate the duplication of electric transmission or distribution facilities.

(d) In certifying its low-income programs pursuant to subdivision (c), a district shall follow public notice and hearing procedures and make detailed findings on the record supporting its decision.

SEC. 4. Section 21100 of the Water Code is amended to read:

21100. (a) Each director, except as otherwise provided in this division, shall be a voter and a landowner in the district and a resident of the division that he or she represents at the time of his or her nomination or appointment and through his or her entire term, except in the case of the director elected at a formation election. A director elected at a formation election shall be a resident and landowner in the proposed district at the time of his or her nomination and a resident of the division that he or she represents during his or her entire term.

(b) In any district having no more than 15 landowners who are voters in the district, a person need not be a voter but shall be qualified to be a director of the district if he or she is a landowner of the district at the time of his or her nomination or appointment and during his or her entire term.

(c) In a district providing retail electricity for residents of the district, each director, except as otherwise provided in this division, shall be a voter of the district and a resident of the division that he or she represents at the time of his or her nomination or appointment and during his or her entire term, except in the case of a director elected at a formation election. A director elected at a formation election shall be a resident in the proposed district at the time of his or her nomination and a resident of the division that he or she represents during his or her entire term.

SEC. 5. Section 2 of this act, adding Section 9607 to the Public Utilities Code, shall not become operative if Assembly Bill 2638 of the 1999–2000 Regular Session is enacted and becomes operative.

SEC. 6. 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 1042

An act to add Sections 454.1, 9607, 9608, 9610, 9611, and 9612 to the Public Utilities Code, and to amend Sections 20804 and 20805 of the Water Code, relating to services.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 454.1 is added to the Public Utilities Code, to read:

454.1. (a) Except as provided in subdivision (b), if a customer with a maximum peak electrical demand in excess of 20 kilowatts located or planning to locate within the service territory of an electrical corporation receives a bona fide offer for electric service from an irrigation district at rates less than the electrical corporation's tariffed rates, the electrical corporation may discount its noncommodity rates, but may not discount its noncommodity rates below its distribution marginal cost of serving that customer. For purposes of this subdivision, the costs of the electric commodity shall be excluded from both the irrigation district and electric corporation's rates. The electrical corporation may recover any difference between its tariffed and discounted service from its remaining customers, allocated as determined by the commission. However, the reallocation may not increase rates to its remaining customers by any

greater amount than the rates would be increased if the customer had taken electric distribution service from the irrigation district and the irrigation district had paid the charge established in subdivision (e) of Section 9607. Further, there shall be a firewall preventing the reallocation of such differences resulting from discounting to residential customers or to commercial customers with maximum peak demands not in excess of 20 kilowatts. The commission shall review the discounts provided under this section by each electrical corporation and report to the Legislature not later than January 15, 2003. The review shall include an assessment of the effectiveness of the discount levels and the rate impacts to customers of the discounts. The commission shall include in its report a recommendation of any changes that should be made to the discount levels in light of other commission approved discount programs.

(b) Subdivision (a) does not apply to a cumulative 75 megawatts of load served by the Merced Irrigation District, determined as follows:

(1) The load is located within the boundaries of Merced Irrigation District, as those boundaries existed on December 20, 1995, together with the territory of Castle Air Force Base which was located outside the district on that date.

(2) For purposes of this section, a megawatt of load shall be calculated in accordance with the methodology established by the California Energy Resource Conservation and Development Commission in its Docket No. 96-IRR-1890.

(c) Subdivision (a) applies to the load of customers that move to the areas described in paragraph (1) of subdivision (b) after December 31, 2000, and such load shall be excluded from the calculation of the 75 megawatts in subdivision (b).

(d) If an electrical corporation seeks to apply the discounts permitted under subdivision (a) within the geographic area described in subdivision (b) of Section 9610, the electrical corporation's resulting rate for distribution service may not be less than 120 percent of the electrical corporation's marginal distribution cost of serving that customer.

SEC. 2. Section 9607 is added to the Public Utilities Code, to read:

9607. (a) The intent of this section is to avoid cost-shifting to customers of an electrical corporation resulting from the transfer of distribution services from an electrical corporation to an irrigation district.

(b) Except as otherwise provided in this section and Section 9608, and notwithstanding any other provision of law, an irrigation district that offered electric service to retail customers as of January 1, 1999, may not construct, lease, acquire, install, or operate facilities for the distribution or transmission of electricity to retail customers located in the service

territory of an electrical corporation providing electric distribution services, unless the district has first applied for and received the approval of the commission and implements its service consistent with the commission's order. The commission shall find that service to be in the public interest and shall approve the request of a district to provide distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution service if, after notice and hearing, the commission determines all of the following:

(1) The district will provide universal service to all retail customers who request service within the area to be served, at published tariff rates and on a just, reasonable, and nondiscriminatory basis, comparable to that provided by the current retail service provider.

(2) If the area the district is proposing to serve is either of the following:

(A) Is within the district's boundaries but less than the entire district, the area to be served includes a percentage of residential customers and small customers, based on load, comparable to the percentage of residential and small customers in the district, based on load.

(B) Includes territory outside the district's boundaries, in which case the territory outside the district's boundaries must include a percentage of residential customers and small customers, based on load, comparable to the percentage of residential and small customers in the county or counties where service is to be provided, based on load.

(3) Service by the district will be consistent with the intent of the state to avoid economic waste caused by duplication of facilities as set forth in Section 8101.

(4) Service by the district will include reasonable mitigation of any adverse effects on the reliability of an existing service by the electrical corporation.

(5) The district has established, funded, and is carrying out public purpose and low-income programs comparable to those provided by the current electric retail service provider.

(6) That district's tariffed electric rates, exclusive of commodity costs, will be at least 15 percent below the tariffed electric rates, exclusive of commodity costs and nonbypassable charges under Sections 367, 368, 375, 376, and 379, of the electrical corporation for comparable services.

(7) Service by the district is in the public interest.

(c) An irrigation district that obtains the approval of the commission under this section to serve an area shall prepare an annual report available to the public on the total load and number of accounts of residential, low-income, agricultural, commercial, and industrial customers served by the irrigation district in the approved service area.

(d) The commission shall have jurisdiction to resolve and adjudicate complaint cases brought against an irrigation district that offered electric service to retail customers as of January 1, 1999, by an interested party where the complaint concerns retail electric service outside the boundaries of the district and within the service territory of an electrical corporation. Nothing in this section grants the commission jurisdiction to adjudicate complaint cases involving retail electric service by an irrigation district inside its boundaries or inside an irrigation district's exclusive service territory.

(e) Any project involving electric transmission or distribution facilities to be constructed or installed by an irrigation district to serve retail customers located in the service territory of an electrical corporation providing electric distribution services shall comply with the California Environmental Quality Act, (Division 13 (commencing with Section 21000)) of the Public Resources Code. The county in which the construction or installation is to occur shall act as the lead agency. If a project involves the construction or installation of electric transmission or distribution facilities in more than one county, the county where the majority of the construction is anticipated to occur shall act as the lead agency.

(f) An irrigation district may not offer service to customers outside of its district boundaries before offering service to all customers within its district boundaries.

(g) This section does not apply to electric distribution service provided by Modesto Irrigation District to those customers or within those areas described in subdivisions (a), (b), and (c) of Section 9610.

(h) The provisions of this section shall not apply to (1) a cumulative 90 megawatts of load served by the Merced Irrigation District that is located within the boundaries of Merced Irrigation District, as those boundaries existed on December 20, 1995, together with the territory of Castle Air Force Base which was located outside the District on that date, or (2) electric load served by the District which was not previously served by an electric corporation that is located within the boundaries of Merced Irrigation District, as those boundaries existed on December 20, 1995, together with the territory of Castle Air Force Base which was located outside the District on that date.

(i) For purposes of this section, a megawatt of load shall be calculated in accordance with the methodology established by the California Energy Resource Conservation and Development Commission in its Docket No. 96-IRR-1890, but the 90 megawatts shall not include electrical usage by customers that move to the areas described in paragraph (1) after December 31, 2000.

(j) Subdivision (a) of this section shall not apply to the construction, modification, lease, acquisition, installation, or operation of facilities for

the distribution or transmission of electricity to customers electrically connected to a district as of December 31, 2000, or to other customers who subsequently locate at the same premises.

(k) In recognition of contractual arrangements and settlements existing as of June 1, 2000, this section does not apply to the acquisition or operation of the electric distribution facilities that are the subject of the Settlement Agreement dated May 1, 2000, between Pacific Gas and Electric Company and the San Joaquin Irrigation District.

(*l*) For purposes of this section, retail customers do not include an irrigation district's own electric load being served of retail by an electrical corporation.

SEC. 3. Section 9608 is added to the Public Utilities Code, to read:

9608. The provisions of Sections 454.1 and 9607 of this code and Section 56133 of the Government Code do not apply to an irrigation district with respect to an area to be served by the irrigation district, if all of the following occur:

(a) The irrigation district acquires substantially all the electric distribution facilities and related subtransmission facilities of any electrical corporation that has an obligation to provide electric distribution service within the area to be served by the irrigation district.

(b) The commission approves a service area agreement between the irrigation district and the electrical corporation pursuant to Sections 8101 to 8108, inclusive, which service area agreement provides that the electrical corporation may not provide electric distribution service in the area to be served by the irrigation district and that the irrigation district may not provide electric distribution service in the remainder of the electrical corporation's service territory.

(c) The commission relieves the electrical corporation of its obligation to serve within the area to be served by the irrigation district.

SEC. 4. Section 9610 is added to the Public Utilities Code, to read:

9610. Commencing on January 1, 2001, and continuing through December 31, 2025, all of the following shall apply:

(a) No electrical corporation shall provide electric transmission or distribution service to retail customers in either of the following areas:

(1) The Modesto Irrigation District electric service area as defined in the August 15, 1940, Purchase of Properties agreement between Modesto Irrigation District and Pacific Gas and Electric Company.

(2) The Mountain House Community Services District as defined in the master specific plan adopted by the board of supervisors of the County of San Joaquin on November 10, 1994.

(b) (1) Within the purchase zone as described in Exhibit ''B'' of The Asset Sale Agreement By and Between Pacific Gas and Electric Company and Modesto Irrigation District Dated July 23, 1997, contained in Public Utilities Commission Application Number

97-07-030, Pacific Gas and Electric Company and Modesto Irrigation District may each provide electric transmission and distribution service to retail customers. The area described in this subdivision shall be considered to be within both Pacific Gas and Electric Company's and Modesto Irrigation District's electric service area.

(2) The Legislature recognizes that electrical corporations and irrigation districts may each construct infrastructure, and that the infrastructure may, in some cases, be duplicative. In those cases, the Legislature encourages irrigation districts and electrical corporations to enter into agreements pursuant to Sections 8101 to 8108, inclusive, where those agreements further the interests of the state as set forth in Section 8101.

(c) Modesto Irrigation District may provide up to 8 megawatts of peak sales to Contra Costa Water District for delivery to its Old River Intake Facility and Rock Slough Pumping Plant.

(d) Except as provided in subdivisions (a), (b), and (c), Modesto Irrigation District may not provide electric transmission or distribution service to retail customers in the territory of Pacific Gas and Electric Company.

SEC. 5. Section 9611 is added to the Public Utilities Code, to read:

9611. Chapter 3 (commencing with Section 56100) of Part 1 of Division 3 of the Government Code does not apply to electric service provided by the Modesto Irrigation District within the geographic areas described in subdivisions (a) and (b) of Section 9610.

SEC. 6. Section 9612 is added to the Public Utilities Code, to read:

9612. The Legislature finds and declares that the policies stated in Section 8101 to 8108, inclusive, would be furthered and that it would be in the best interests of the state, and not incompatible with the public interest, if an agreement embodying the provisions of Section 9610 were to be approved by the commission. The Legislature hereby encourages the Pacific Gas and Electric Company and Modesto Irrigation District to agree on the terms of an agreement embodying the provisions of Section 9610, and encourages the commission to approve that agreement to the extent that the agreement is consistent with the policies of this state.

SEC. 7. Section 20804 of the Water Code is amended to read:

20804. At the hearing the board of supervisors shall determine by resolution whether or not the petition and notice comply with Chapter 1 of this part. Notwithstanding Section 22116 or any other provision of law, the board shall also determine whether the petition has been presented and the district is proposed to be formed for the primary purpose of providing irrigation services.

SEC. 8. Section 20805 of the Water Code is amended to read:

20805. (a) If the board of supervisors determines that any of the requirements for the formation petition or notice were not complied with, the petition shall be dismissed without prejudice to the right of the proper number of persons to present a new petition covering the same matter or to present the same petition with additional signatures if additional signatures are necessary to comply with the requirements of Chapter 1 of this part.

(b) If the board of supervisors determines that the district is being formed for a primary purpose other than providing irrigation services, the petition shall be dismissed without prejudice to the right of the proper number of persons to present a new petition for the primary purpose of providing irrigation services.

CHAPTER 1043

An act to amend Section 2827 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 2827 of the Public Utilities Code is amended to read:

2827. (a) The Legislature finds and declares that a program to provide net energy metering for eligible customer-generators is one way to encourage private investment in renewable energy resources, stimulate in-state economic growth, enhance the continued diversification of California's energy resource mix, and reduce interconnection and administrative costs for electricity suppliers.

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

(1) ''Electric service provider'' means an electric corporation, as defined in Section 218, a local publicly owned electric utility, as defined in Section 9604, or an electrical cooperative, as defined in Section 2776. ''Electric service provider'' also means an entity that offers electrical service to residential and small commercial customers, as defined in Section 394, if that entity offers net energy metering. Any entity that offers net energy metering to residential and small commercial customers shall comply with this section.

(2) ''Eligible customer-generator'' means a residential customer, or a small commercial customer as defined in subdivision (h) of Section 331, of an electric service provider, who uses a solar or a wind turbine

electrical generating facility, or a hybrid system of both, with a capacity of not more than 10 kilowatts that is located on the customer's premises, is interconnected and operates in parallel with the electric grid, and is intended primarily to offset part or all of the customer's own electrical requirements.

(3) ''Net energy metering'' means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period as described in subdivision (e). Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions. An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electric service provider, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator pursuant to subdivision (e), or to collect solar or wind electric generating system performance information for research purposes. If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter. An eligible customer-generator who already owns an existing solar or wind turbine electrical generating facility, or a hybrid system of both, is eligible to receive net energy metering service in accordance with this section.

(4) ''Ratemaking authority'' means, for an electrical corporation as defined in Section 218, or an electrical cooperative as defined in Section 2776, the commission, and for a local publicly owned electric utility as defined in Section 9604, the local elected body responsible for regulating the rates of the utility.

(c) (1) Every electric service provider shall develop a standard contract or tariff providing for net energy metering, and shall make this contract available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer-generators equals one-tenth of 1 percent of the electric service provider's aggregate customer peak demand.

(2) On an annual basis, beginning in 1999, every electric service provider shall make available to the ratemaking authority information on the total rated generating capacity used by eligible customer-generators that are customers of that provider in the provider's service area. For those electric service providers who are operating pursuant to Section

394, they shall make available to the ratemaking authority the information required by this paragraph for each eligible customer-generator that is their customer for each service area of an electric corporation, local publicly owned electric utility, or electrical cooperative, in which the customer has net energy metering. The ratemaking authority shall develop a process for making the information required by this paragraph available to energy service providers, and for using that information to determine when, pursuant to paragraph (3), a service provider is not obligated to provide net energy metering to additional customer-generators in its service area.

(3) Notwithstanding paragraph (1), an electric service provider is not obligated to provide net energy metering to additional customer-generators in its service area when the combined total peak demand of all customer-generators served by all the electric service providers in that service area furnishing net energy metering to eligible customer-generators equals one-tenth of 1 percent of the aggregate customer peak demand of those electric service providers.

(4) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric supplier that does not offer net energy metering and is therefore not an electric service provider, the customer is not an eligible customer-generator and the electric corporation, as defined in Section 218, that provides distribution service for the direct transactions, is not obligated to provide net energy metering to the customer.

(5) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric supplier that offers net energy metering and is therefore an electric service provider, and the customer is an eligible customer-generator , the electric corporation, as defined in Section 218, that provides distribution service for the direct transactions may recover from the customer's electric service provider the incremental costs of metering and billing service related to net energy metering in an amount set by the commission.

(d) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the same customer would be assigned if such customer was not an eligible customer-generator. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the customer-generator's net kilowatthour consumption over a 12-month period, without regard to the customer-generator's choice of electric service provider that offers net energy metering and is subject to this section pursuant to paragraph (1) of subdivision (b), in accordance with subdivision (e). Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would

increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this legislation, and shall not form a part of net energy metering contracts or tariffs.

(e) The net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and the electricity generated by the eligible customer-generator and fed back to the electric grid over a 12-month period. The following rules shall apply to the annualized net metering calculation:

(1) The eligible customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible customer-generator's system with an electric service provider, and at each anniversary date thereafter, be billed for electricity used during that period. The electric service provider shall determine if the eligible customer-generator was a net consumer or a net producer of electricity during that period.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electric service provider exceeds the electricity generated by the eligible customer-generator during that same period, the eligible customer-generator is a net electricity consumer and the electric service provider shall be owed compensation for the eligible customer-generator's net kilowatthour consumption over that same period. The compensation owed for the eligible customer-generator's net 12-month kilowatthour consumption shall be calculated as follows:

(A) For eligible customer-generators taking service under tariffs employing ''baseline'' and ''over baseline'' rates, any net monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same customer would be assigned to or be eligible for if the customer was not an eligible customer-generator. If those same customer-generators are net generators over a billing period, the net kilowatthours generated shall be valued at the same price per kilowatthour as the electric service provider would charge for the baseline quantity of electricity during that billing period, and if the number of kilowatthours generated exceeds the baseline quantity, the excess shall be valued at the same price per kilowatthour as the electric service provider would charge for electricity over the baseline quantity during that billing period.

(B) For eligible customer-generators taking service under tariffs employing ''time of use'' rates, any net monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same customer would be assigned to or be eligible for if the customer was not an eligible customer-generator. When those same customer-generators are net generators during any discrete time of use

period, the net kilowatthours produced shall be valued at the same price per kilowatthour as the electric service provider would charge for retail kilowatthour sales during that same time of use period. If the eligible customer-generator's time of use electrical meter is unable to measure the flow of electricity in two directions, paragraph (3) of subdivision (b) shall apply.

(C) For all customer-generators and for each monthly period, the net balance of moneys owed to the electric service provider for net consumption of electricity or credits owed to the customer-generator for net generation of electricity shall be carried forward until the end of each 12-month period.

(3) At the end of each 12-month period, where the electricity generated by the eligible customer-generator during the 12-month period exceeds the electricity supplied by the electric service provider during that same period, the eligible customer-generator is a net electricity producer and the electric service provider shall retain any excess kilowatthours generated during the prior 12-month period. The eligible customer-generator shall not be owed any compensation for those excess kilowatthours unless the electric service provider enters into a purchase agreement with the eligible customer-generator for those excess kilowatthours.

(4) The electric service provider shall provide every eligible customer-generator with net electricity consumption information with each regular bill. That information shall include the current monetary balance owed the electric service provider for net electricity consumed since the last 12-month period ended. Notwithstanding subdivision (e), an electric service provider shall permit that customer to pay monthly for net energy consumed.

(5) If an eligible customer-generator terminates the customer relationship with the electric service provider, the electric service provider shall reconcile the eligible customer-generator's consumption and production of electricity during any part of a 12-month period following the last reconciliation, according to the requirements set forth in this subdivision, except that those requirements shall apply only to the months since the most recent 12-month bill.

(6) If an electric service provider providing net metering to a customer-generator ceases providing that electrical service to that customer during any 12-month period, and the customer-generator enters into a new net metering contract or tariff with a new electric service provider, the 12-month period, with respect to that new electric service provider, shall commence on the date on which the new electric service provider first supplies electric service to the customer-generator.

(f) A solar or wind turbine electrical generating system, or a hybrid system of both, used by an eligible customer-generator shall meet all

applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability. A customer-generator whose solar or wind turbine electrical generating system, or a hybrid system of both, meets those standards and rules shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

CHAPTER 1044

An act to amend Section 5.1 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to county water authorities.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 5.1 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 5.1. (a) Any authority incorporated under this act may utilize any part of its water, and any parts of its works, facilities, improvements, and property used for the development, storage, or transportation of water, to provide, generate, and deliver hydroelectric power, and may acquire, construct, operate, and maintain any and all works, facilities, improvements, and property necessary or convenient for that utilization.

(b) Any authority incorporated under this act may do any of the following:

(1) Pursuant to contract, provide, sell, and deliver hydroelectric power to the United States of America or to any board, department, or agency thereof, to the state for the purposes of the State Water Development System, and to any public agency, private corporation, or any other person or entity, or any combination thereof, engaged in the sale of electric power at retail or wholesale.

(2) Use all or any part of hydroelectric power directly, or indirectly through exchange, in exercising any other power of an authority.

(c) (1) An authority located within San Diego County may acquire, construct, own, operate, control, or use, within or without, or partially within or partially without, its territory, works or parts of works for

supplying its member public agencies, or some of them, with gas or electricity, or both gas and electricity, and may do all things necessary or convenient to the full exercise of these powers.

(2) An authority located within San Diego County may, pursuant to a contract, purchase gas, electricity, or related services from the United States of America or any board, department, or agency thereof, the State of California, any public agency, person, or private company and provide, sell, exchange, or deliver them to any public agency, private company, or person, or any combination thereof, engaged in the sale of gas or electricity at retail.

(d) For the purposes of this section, ''public agency'' means a city, county, city and county, district, local agency, public authority, or public corporation.

CHAPTER 1045

An act to amend Section 51286 of the Government Code, relating to agricultural land, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 51286 of the Government Code is amended to read:

51286. (a) Any action or proceeding which, on the grounds of alleged noncompliance with the requirements of this chapter, seeks to attack, review, set aside, void, or annul a decision of a board of supervisors or a city council to cancel a contract shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) The action or proceeding shall be commenced within 180 days from the date of the council or board order acting on a petition for cancellation filed under this chapter.

(c) Notwithstanding subdivision (b), if the cancellation relates to proposed electric generation projects that are located in the southern half of Kern County with a capacity of not less than 701 megawatts, but not greater than 800 megawatts, and for which applications were accepted as data adequate by the Energy Resources and Conservation Development Commission during the month of January 2000, the action or proceeding shall be commenced within 30 days from the date that the Energy Resources and Conservation Development Commission issues

its determination on an electric generation project described in this subdivision. This subdivision shall become inoperative on December 31, 2001.

SEC. 2. Due to the unique facts and circumstances relative to power generation projects in Kern County, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, special legislation contained in Section 1 of this act is necessarily applicable only to Kern County.

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:

(a) There is a projected shortage of electrical power to meet projected demands, resulting in a need to build more electrical power generating facilities.

(b) The subject property's soil quality is relatively poor for agricultural purposes, supporting only limited grazing activities and not highly productive grazing, field crops, row crops, orchards, or vineyards.

(c) The subject property is affected by a gravel quarry on an adjacent property that is not subject to a Williamson Act contract.

Therefore, it is necessary that this act take effect immediately.

CHAPTER 1046

An act to add Chapter 7.5 (commencing with Section 25650) to Division 15 of, and to repeal Section 25615 of, the Public Resources Code, relating to energy assistance and technology.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 7.5 (commencing with Section 25650) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 7.5. AGRICULTURAL INDUSTRY ENERGY PROGRAM

25650. (a) All funds from loan repayments and interest that become due and payable for loans made by the commission pursuant to an agriculture energy assistance program shall be deposited in the Energy

Technologies Research, Development, and Demonstration Account, and shall be available for loans and technical assistance pursuant to this section, upon appropriation in the Budget Act. Up to 20 percent of the annual appropriation may be available for technical assistance.

(b) Loans made pursuant to this section shall be for the purchase of equipment and services for agriculture energy efficiency and development demonstration projects, including, but not limited to, production of methane or ethanol, use of wind, photovoltaics, and other sources of energy for irrigation pumping, application of load management conservation techniques, improvements in water pumping and pressurization techniques, and conservation tillage techniques.

(c) The loans shall contain terms that provide for a repayment period of not more than seven years and for interest at a rate that is not less than 2 percent below the rate earned by moneys in the Pooled Money Investment Account.

SEC. 2. Section 25615 of the Public Resources Code is repealed.

CHAPTER 1047

An act to amend Section 12940 of the Government Code, relating to harassment.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject

an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation, or any intent to make any such limitation, specification or discrimination. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the regulations adopted pursuant thereto, nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(f) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(h) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an

employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, ''employer'' means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of ''employer'' in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, ''employer'' does not include a religious association or corporation not organized for private profit.

(C) For purposes of this subdivision, ''harassment'' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, ''a person providing services pursuant to a contract'' means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(i) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to

employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(j) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(k) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(*l*) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

CHAPTER 1048

An act to amend Sections 19231, 19240, and 19702 of, and to add Section 19632 to, the Government Code, relating to state civil service.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 19231 of the Government Code is amended to read:

19231. (a) For the purposes of this article, the definitions in Section 12926, as that section presently reads or as it subsequently may be amended, apply.

SEC. 2. Section 19240 of the Government Code is amended to read:

19240. (a) The State Personnel Board shall be responsible for the Limited Examination and Appointment Program. This program shall provide an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities in the state civil service where accommodation can be provided and where prohibitive physical requirements are not mandated by the board.

(b) ''Disability'' for the purposes of this article has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(c) Notwithstanding subdivision (b), if the definition of ''disability'' used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental or physical disability, as defined in subdivision (b), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definition in subdivision (b). The definition of ''disability'' contained in subdivision (b) shall not be deemed to refer to or include conditions excluded from the federal definition of ''disability'' pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

SEC. 3. Section 19632 is added to the Government Code, to read:

19632. In any proceeding brought pursuant to Section 1094.5 of the Code of Civil Procedure for the purpose of inquiring into the validity of any final administrative order or decision by the board, an award of costs or attorney's fees or both to the petitioner shall be borne by the real party in interest and shall not be assessed against the board, unless there is no real party in interest. This section may not be construed to authorize an award of attorney's fees.

SEC. 4. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, ''discrimination'' includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, the term ''physical disability'' has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(c) As used in this section, the term ''mental disability'' has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of ''disability'' pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) (1) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing

authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.5 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(i) (1) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

(2) This subdivision shall not apply to complaints of discrimination filed in accordance with Section 19576.2.

CHAPTER 1049

An act to amend Sections 51, 51.5, and 54 of the Civil Code, and to amend Sections 12926, 12940, 12955.3, and 19231 of, and to add Section 12926.1 to, the Government Code, relating to civil rights.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 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 Prudence Kay Poppink Act.

SEC. 2. Section 51 of the Civil Code is amended to read:

51. (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, or medical condition.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) ''Disability'' means any mental or physical disability as defined in Section 12926 of the Government Code.

(2) ''Medical condition'' has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

SEC. 3. Section 51.5 of the Civil Code is amended to read:

51.5. (a) No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, disability, or medical condition of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

(b) As used in this section, ''person'' includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

(c) This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(d) For purposes of this section:

(1) ''Disability'' means any mental or physical disability as defined in Section 12926 of the Government Code.

(2) ''Medical condition'' has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

SEC. 4. Section 54 of the Civil Code is amended to read:

54. (a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

(b) For purposes of this section:

(1) ''Disability'' means any mental or physical disability as defined in Section 12926 of the Government Code.

(2) ''Medical condition'' has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(c) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.

SEC. 5. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) ''Affirmative relief'' or ''prospective relief'' includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) ''Age'' refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) ''Employee'' does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) ''Employer'' includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

''Employer'' does not include a religious association or corporation not organized for private profit.

(e) ''Employment agency'' includes any person undertaking for compensation to procure employees or opportunities to work.

(f) ''Essential functions'' means the fundamental job duties of the employment position the individual with a disability holds or desires. ''Essential functions'' does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) ''Labor organization'' includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) ''Medical condition'' means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, ''genetic characteristics'' means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) ''Mental disability'' includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) ''Limits'' shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) ''Major life activities'' shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

''Mental disability'' does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive

substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) ''On the bases enumerated in this part'' means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

(k) ''Physical disability'' includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) ''Limits'' shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) ''Major life activities'' shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) ''Physical disability'' does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(*l*) Notwithstanding subdivisions (i) and (k), if the definition of ''disability'' used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) ''Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation'' includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) ''Reasonable accommodation'' may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) ''Religious creed,'' ''religion,'' ''religious observance,'' ''religious belief,'' and ''creed'' include all aspects of religious belief, observance, and practice.

(p) ''Sex'' includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(q) ''Sexual orientation'' means heterosexuality, homosexuality, and bisexuality.

(r) ''Supervisor'' means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(s) ''Undue hardship'' means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) the nature and cost of the accommodation needed, (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise

of these accommodations upon the operation of the facility, (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities, (4) the type of operations, including the composition, structure, and functions of the workforce of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 5.5. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) ''Affirmative relief'' or ''prospective relief'' includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) ''Age'' refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) ''Employee'' does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) ''Employer'' includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

''Employer'' does not include a religious association or corporation not organized for private profit.

(e) ''Employment agency'' includes any person undertaking for compensation to procure employees or opportunities to work.

(f) ''Essential functions'' means the fundamental job duties of the employment position the individual with a disability holds or desires. ''Essential functions'' does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) ''Labor organization'' includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) ''Medical condition'' means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, ''genetic characteristics'' means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) ''Mental disability'' includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) ''Limits'' shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable

accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) ''Major life activities'' shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

''Mental disability'' does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) ''On the bases enumerated in this part'' means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

(k) ''Physical disability'' includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) ''Limits'' shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) ''Major life activities'' shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) ''Physical disability'' does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(*l*) Notwithstanding subdivisions (i) and (k), if the definition of ''disability'' used in the Americans with Disabilities Act of 1990 P.L. 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) ''Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation'' includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) ''Reasonable accommodation'' may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations,

training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) ''Religious creed,'' ''religion,'' ''religious observance,'' ''religious belief,'' and ''creed'' include all aspects of religious belief, observance, and practice.

(p) ''Sex'' includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. ''Sex'' also includes, but is not limited to, a person's gender, as defined in Section 422.76 of the Penal Code, except that the references in that definition to the ''victim'' and ''defendant'' shall, for purposes of this part, be deemed to refer respectively to the victim of a discriminatory act prohibited by this part and the person engaging in that prohibited conduct.

(q) ''Sexual orientation'' means heterosexuality, homosexuality, and bisexuality.

(r) ''Supervisor'' means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(s) ''Undue hardship'' means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) the nature and cost of the accommodation needed, (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility, (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities, (4) the type of operations, including the composition, structure, and functions of the workforce of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 6. Section 12926.1 is added to the Government Code, to read:

12926.1. The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the

Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of ''physical disability'' and ''mental disability'' under the law of this state require a ''limitation'' upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a ''substantial limitation.'' This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, ''working'' is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

(d) Notwithstanding any interpretation of law in Cassista v. Community Foods (1993) 5 Cal.4th 1050, the Legislature intends (1) for state law to be independent of the Americans with Disabilities Act of 1990, (2) to require a ''limitation'' rather than a ''substantial limitation'' of a major life activity, and (3) by enacting paragraph (4) of subdivision (i) and paragraph (4) of subdivision (k) of Section 12926, to provide protection when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity.

(e) The Legislature affirms the importance of the interactive process between the applicant or employee and the employer in determining a reasonable accommodation, as this requirement has been articulated by the Equal Employment Opportunity Commission in its interpretive guidance of the Americans with Disabilities Act of 1990.

SEC. 7. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for

a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed,

color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation, or any intent to make any such limitation, specification or discrimination.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make

any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) For purposes of this subdivision only, ''employer'' means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of ''employer'' in subdivision (d) of

Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, ''employer'' does not include a religious association or corporation not organized for private profit.

(C) For purposes of this subdivision, ''harassment'' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(4) For purposes of this subdivision, ''a person providing services pursuant to a contract'' means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental

disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

SEC. 7.5. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the

employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation, or any intent to make any such limitation, specification or discrimination.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, ''employer'' means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of ''employer'' in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, ''employer'' does not include a religious association or corporation not organized for private profit.

(C) For purposes of this subdivision, ''harassment'' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, ''a person providing services pursuant to a contract'' means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and

performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

SEC. 8. Section 12955.3 of the Government Code is amended to read:

12955.3. For purposes of this part, ''disability'' includes, but is not limited to, any physical or mental disability as defined in Section 12926.

SEC. 9. Section 19231 of the Government Code is amended to read:

19231. As used in this article, ''individual with a disability'' means any individual who has a physical or mental disability as defined in Section 12926.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 12926 of the Government Code proposed by both this bill and Assembly Bill 2142. 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 12926 of the Government Code, and (3) this bill is enacted after Assembly Bill 2142, in which case Section 5 of this bill shall not become operative.

SEC. 11. Section 7.5 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and Assembly Bill 1856. 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 12940 of the Government Code, and (3) this bill is enacted after Assembly Bill 1856, in which case Section 7 of this bill shall not become operative.

CHAPTER 1050

An act to amend Sections 381, 383.5, and 394.25 of, and to add Article 15 (commencing with Section 399) to Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs

which enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars ($32,000,000) per year; for Southern California Edison Company a level of ninety million dollars ($90,000,000) for each of the years l998, 1999, and 2000; fifty million dollars ($50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars ($106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of four million dollars ($4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars ($28,500,000) per year; and for Pacific Gas and Electric Company a level of thirty million dollars ($30,000,000) per year.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars ($109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars ($136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars ($12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars ($49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars ($76,500,000) for the year 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars ($48,000,000) per year through the

year 2001. Additional funding not to exceed seventy-five million dollars ($75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars ($540,000,000).

(4) Up to fifty million dollars ($50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars ($90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(d) Notwithstanding any other provisions of this chapter, entities subject to the jurisdiction of the Public Utilities Commission shall extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars ($540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) The commission's authority to collect funds pursuant to this section for purposes of paragraph (3) of subdivision (b) shall become inoperative on March 31, 2002.

(g) For purposes of this article, ''emerging renewable technology'' means a new renewable technology, including, but not limited to, photovoltaic technology, that is determined by the California Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

SEC. 2. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) As used in this section, the following terms have the following meaning:

(1) ''In-state renewable electricity generation technology'' means biomass, solar thermal, photovoltaic, wind, geothermal, small hydropower of 30 megawatts or less, waste tire, digester gas, landfill gas, and municipal solid waste generation technologies, as described in the report, defined in paragraph (2), including any additions or enhancements thereto, that are produced in facilities located in this state and placed in operation after September 26, 1996, or that were operational prior to that date, and that are also certified under Section 292.2904 of Title 18 of the Code of Federal Regulations as a qualifying small power production facility either located in California, or that began selling electricity to a California electrical corporation prior to September 26, 1996, under a Standard Offer Power Purchase Agreement authorized by the California Public Utilities Commission.

(2) ''Report'' means the Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the State Energy Resources Conservation and Development Commission.

(b) (1) Forty-five percent of the money collected pursuant to paragraph (3) of subdivision (c) of Section 381, up to two hundred forty-three million dollars ($243,000,000), shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used to support in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(A) Funding for existing renewable electricity generation technologies shall be grouped into three technology tiers, as follows:

(i) Twenty-five percent of the money, up to one hundred thirty-five million dollars ($135,000,000), shall be used to fund first tier technologies, including biomass, solar thermal, and whole waste tire technologies.

(ii) Thirteen percent of the money, up to seventy million two hundred thousand dollars ($70,200,000) shall be used to fund second tier wind technologies.

(iii) Seven percent of the money, up to thirty-seven million eight hundred thousand dollars ($37,800,000), shall be used to fund third tier technologies, including geothermal, small hydropower, digester gas, landfill gas, and municipal solid waste technologies.

(B) The State Energy Resources Conservation and Development Commission shall establish a cents per kilowatt hour production incentive, not to exceed the payment caps per kilowatthour established

in the report representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The target price for Tier 1 technologies shall not be based on less than four cents ($0.04) per kilowatthour. The market clearing price for electricity shall be the energy prices paid to nonutility power generators as provided in Section 390.

(C) Funding for each type of existing in-state renewable electricity generation technology shall be reduced each year during the period from January 1, 1998, to January 1, 2002, to encourage the development of increasingly competitive technologies.

(D) Facilities that are eligible to receive funding pursuant to this section shall be certified in accordance with the requirements set forth in the report and may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under a fixed energy price payment under a long-term contract with an existing in-state electrical corporation.

(ii) Derives from utility-owned facility that is receiving, or is eligible to receive, recovery of above-market facility costs through a competitive transition charge.

(iii) Is used onsite, sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(c) (1) Thirty percent of the money, up to one hundred sixty-two million dollars ($162,000,000), collected pursuant to paragraph (3) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Funds to further the purposes of this subdivision may be committed for multiple years.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funds shall be allocated for proposed projects based on a competitive solicitation process whereby production incentives, not to exceed one and one-half cents ($.015) per kilowatthour, are awarded to the lowest bidders, provided that not more than 25 percent of the funds allocated pursuant to paragraph (1) may be awarded to a single project.

(B) Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to

January 1, 2002, unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(C) The amount of funds expended shall be increased for each successive year during the period from January 1, 1998, to January 1, 2002, as fewer projects are expected to be funded during the first few years after funding becomes available.

(D) Facilities that are eligible to receive payments from the New Renewable Resources Account created pursuant to paragraph (2) of subdivision (a) of Section 445 of the Public Utilities Code shall be certified as specified in the report and may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments.

(ii) Is used onsite and is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by customer-owned electricity generating systems.

(E) Eligibility to compete for funds or to receive funds shall not be contingent upon the location or nature of the power purchaser.

(3) Repowered wind projects shall be eligible for funding under this subdivision if the new investment is at least 80 percent of the value of the repowered facility.

(d) (1) Ten percent of the money collected pursuant to paragraph (3) of subdivision (c) of Section 381, up to fifty-four million dollars ($54,000,000), shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Funds to further the purposes of this subdivision may be committed for multiple years.

(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with all of the following requirements:

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than four years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C) of paragraph (2) of subdivision (d), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts. The amount of the per-watt incentive shall decline over the term of the program, with a corresponding increase in the amount of total electrical capacity eligible for the incentive, thereby encouraging the manufacturers and suppliers of eligible systems to reduce system costs. Incentives shall be limited to a maximum percentage of the system price, as defined by the State Energy Resources Conservation and Development Commission, and the maximum incentive percentage shall decline over the term of the program, as shall the per-watt incentive, in amounts to be determined by the State Energy Resources Conservation and Development Commission.

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than ten kilowatts rated electrical capacity per customer site, provided that the technologies meet the emerging technology eligibility criteria contained in the report prepared by State Energy Resources Conservation and Development Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electrical energy demand, and shall not be owned by electrical corporations or publicly owned utilities, be located at a customer site that is not receiving distribution service from existing in-state electrical corporations. Not less than 60 percent of the available incentive funds shall be reserved for systems of 10 kilowatts rated electrical capacity or smaller, and not less than 15 percent of the funds shall be reserved for systems of 100 kilowatts rated electrical capacity or smaller. All eligible electricity generating system components shall be new and unused, and shall not have been previously placed in service in any other location or for any other application. Systems and their fuel resource shall be located on the premises of the end-use consumer of the electricity produced, and all eligible electricity generating systems shall be connected to the utility grid in California.

(D) The State Energy Resources Conservation and Development Commission shall also determine, in collaboration with industry and consumer interests, if a program provision limiting the amount of funds available for any single project is warranted, and determine how federal, state, or other funds or incentives not related to this section that are already available, or that may become available for eligible electricity

generating systems, may impact the availability of funds allocated under this section, if at all. The emerging renewable technologies program shall be implemented not later than March 31, 1998, and incentives shall be available for eligible electricity generating systems that are placed in service after January 1, 1998, in accordance with the program provisions developed by the State Energy Resources Conservation and Development Commission. However, projects placed in service after January 1, 1998, and prior to September 1, 1998, shall not be subject to limits, if any, that may be determined by the commission, pursuant to this subparagraph.

(e) Fifteen percent of the money collected pursuant to paragraph (3) of subdivision (c) of Section 381, up to eighty-one million dollars ($81,000,000), shall be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies, as provided in the report, subject to the following requirements:

(1) (A) Fourteen percent of the money, up to seventy-five million six hundred thousand dollars ($75,600,000), shall be expended to provide customer credits for purchases of renewable energy produced by certified energy providers. Customer credits shall be awarded to California retail customers located in the service territory of an investor-owned utility that is subject to Section 381 who purchase qualifying renewable electric power through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity source claimed has been sold not more than once to a retail customer. Credits may be given without regard to whether the power supplier is also receiving funds under any other subdivision of this section.

(B) Credits awarded pursuant to this paragraph may be paid directly to energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits shall not exceed one and one-half cents ($.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, shall not exceed one thousand dollars ($1,000) per customer in 1998 and 1999. Thereafter, the State Energy Resources Conservation and Development Commission shall determine by January 10 of each year the average customer incentive rebate level paid over the preceding calendar year. In the event that the payments have remained at the one and one-half cents ($.015) per kilowatthour cap over the preceding calendar year, the one thousand dollars ($1,000) per customer cap shall be removed for that calendar

year, except that in no event shall more than fifteen million dollars ($15,000,000) of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(C) Funding for credits pursuant to this paragraph shall be increased for each successive year during the period from January 1, 1998, to January 1, 2002, to encourage the increasing use of those credits.

(D) The State Energy Resources Conservation and Development Commission shall develop interim criteria and procedures for the certification of energy providers and for the identification of energy purchasers who are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. Such criteria and procedures shall apply only to funding eligibility and shall not extend to other renewable marketing claims.

(E) The Public Utilities Commission shall notify the State Energy Resources Conservation and Development Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to Paragraph (4) of Subdivision (b) of Section 394.25.

(2) One percent of the money, up to five million four hundred thousand dollars ($5,400,000), shall be expended to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(f) (1) The State Energy Resources Conservation and Development Commission shall adopt guidelines governing the funding programs authorized under this section, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph shall not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be deemed to satisfy the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(2) The State Energy Resources Conservation and Development Commission shall, in collaboration with eligible emerging technology industry stakeholders and consumer interests, complete the emerging technology program design, as outlined in subdivision (d), and implement its provisions.

(3) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those described in the guidelines adopted by the State Energy Resources Conservation and

Development Commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and certified to receive, payments or awards, including satisfying conditions specified by the State Energy Resources Conservation and Development Commission, shall not constitute the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(g) The State Energy Resources Conservation and Development Commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this section. Reports prepared pursuant to this section shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The reports shall also address the allocation of funds from interest on the accounts described in this section, money in the accounts described in subdivision (e) of Section 381, and money included in the accounts pursuant to Section 385. Notwithstanding paragraph (4) of subdivision (b) of Section 383 or subdivisions (b), (c), (d), and (e) of this section, money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report.

SEC. 3. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of

law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision (e) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5. This section may not be construed to apply retroactively.

SEC. 4. Article 15 (commencing with Section 399) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 15. Reliable Electric Service Investments Act

399. (a) This article shall be known, and may be cited, as the Reliable Electric Service Investments Act.

(b) The Legislature finds and declares that safe, reliable electric service is of utmost importance to the citizens of this state, and its economy.

(c) The Legislature further finds and declares that in order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is essential that prudent investments continue to be made in all of the following areas:

(1) To protect the integrity of the electric distribution grid.

(2) To ensure an adequately sized and trained utility workforce.

(3) To ensure cost-effective energy efficiency improvements.

(4) To achieve a sustainable supply of renewable energy.

(5) To advance public interest research, development and demonstration programs not adequately provided by competitive and regulated markets.

(d) It is the intent of the Legislature to reaffirm, without requiring revision, California's doctrine, as reflected in regulatory and judicial decisions, regarding electrical corporations' reasonable opportunity to recover costs and investments associated with their electric distribution grid and the reasonable opportunity to attract capital for investment on reasonable terms.

(e) The Legislature further finds and declares all of the following:

(1) Acting under applicable constitutional and statutory authorities, the Public Utilities Commission and the boards of local publicly owned electric utilities have included in regulated electricity prices, investments that are essential to maintaining system reliability, reducing California electricity users' bills, and mitigating environmental costs of California users' electricity consumption.

(2) Among the most important of these ''system benefits'' investments categories are energy efficiency, renewable energy, and public interest research, development and demonstration (RD&D).

(3) Energy efficiency investments funded from California's usage-based charges on electricity distribution help improve systemwide reliability by reducing demand in times and areas of system congestion, and at the same time reduce all California electricity users' costs. These investments also significantly reduce environmental costs associated with California's electricity consumption, including, but not limited to, degradation of the state's air, water, and land resources.

(4) California's in-state renewable energy resources help alleviate supply deficits that could threaten electric system reliability, reduce environmental costs associated with California's electricity

consumption, and increase the diversity of the electricity system's fuel mix, reducing electricity users' exposure to fossil-fuel price volatility.

(5) California's public-interest research, development and demonstration (RD&D) investments enhance private and regulated sector investment in electricity system technologies, and are designed specifically to help ensure sustained improvement in the economic and environmental performance of the distribution, transmission, and generation and end-use systems that serve California electricity users.

(6) California has established a long tradition of recovering system benefits investments through usage-based electricity charges, which is reflected in at least two decades of electricity price regulation by the commission, the boards of local publicly owned electric utilities, and the mandate of the Legislature in Chapter 854 of the Statutes of 1996 (Assembly Bill 1890 of the 1995-96 Regular Session of the Legislature) and Chapter 905 of the Statutes of 1997 (Senate Bill 90 of the 1995-96 Regular Session of the Legislature).

(7) Unless the Legislature acts to extend the mandate of Chapter 854 of the Statutes of 1996 for minimum levels of usage based system benefits charges, California electricity users are at substantial risk of higher economic and environmental costs and degraded reliability.

399.1. (a) As used in this article, the term ''Energy Commission'' means the State Energy Resources Conservation and Development Commission.

(b) As used in this article, the term ''local publicly owned electric utility'' has the same meaning as set forth in subdivision (d) of Section 9604.

399.2. (a) (1) It is the policy of this state, and the intent of the Legislature, to reaffirm that each electrical corporation shall continue to operate its electric distribution grid in its service territory and shall do so in a safe, reliable, efficient, and cost-effective manner.

(2) In furtherance of this policy, it is the intent of the Legislature that each electrical corporation shall continue to be responsible for operating its own electric distribution grid including, but not limited to, owning, controlling, operating, managing, maintaining, planning, engineering, designing, and constructing its own electric distribution grid, emergency response and restoration, service connections, service turnons and turnoffs, and service inquiries relating to the operation of its electric distribution grid, subject to the commission's authority.

(b) In order to ensure the continued efficient use, and cost-effective, safe, and reliable operation of the electric distribution grid, each electrical corporation shall continue to operate its electric distribution grid in its service territory consistent with Section 330.

(c) In carrying out the purposes of this section, each electrical corporation shall continue to make reasonable investments in its electric

distribution grid. Each electrical corporation shall continue to have a reasonable opportunity to fully recover from all customers of the electrical corporation, in a manner determined by the commission pursuant to this code, all of the following:

(1) Reasonable investments in its electric distribution grid.

(2) A reasonable return on the investments in its electric distribution grid.

(3) Reasonable costs to operate its electric distribution grid.

(d) For purposes of this section, the term "electric distribution grid" means those facilities owned or operated by an electrical corporation that are not under the control of the Independent System Operator and that are used to transmit, deliver, or furnish electricity for light, heat, or power.

(e) Nothing in this section shall be construed to alter or to affect any of the following:

(1) Section 216, 218, or 2827.

(2) The authority of the commission to establish and enforce standards and tariff conditions for the interconnection of customer-owned facilities to the electric distribution grid.

(3) The ratemaking authority of the commission under this code.

(4) The authority of the commission to establish rules governing the extension of service to new customers.

(f) Nothing in this section shall be construed to alter or affect any authority or lack of authority of the commission regarding the ownership and operation of new electric generation used in whole, or in part, for the purpose of maintaining or enhancing the reliability of the electric distribution grid.

(g) Nothing in this section diminishes or expands any existing authority of a local governmental entity.

(h) The commission shall require every electrical corporation operating an electric distribution grid to inform all customers who request residential service connections via telephone of the availability of the California Alternative Rates for Energy (CARE) program and how they may qualify for and obtain these services and shall accept applications for the CARE program according to procedures specified by the commission. Electrical corporations shall recover the reasonable costs of implementing this subdivision.

399.3. Nothing in Section 399.2 shall be construed to preclude any of California's local publicly owned electric utilities from exercising authority to operate their electric distribution grid as provided under law.

399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and

the intent of the Legislature that the commission shall continue to administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority.

(2) As used in this section, the term "energy efficiency" includes, but is not limited to, cost-effective activities to achieve peak load reduction that improve end-use efficiency, lower customers' bills, and reduce system needs.

(b) The commission, in evaluating energy efficiency investments under its existing statutory authorities, shall also ensure both of the following:

(1) That local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.

(2) That no energy efficiency funds are used to provide incentives for the purchase of new energy-efficient refrigerators.

399.6. (a) In order to optimize public investment and ensure that the most cost-effective and efficient investments in renewable resources are vigorously pursued, the Energy Commission shall create an investment plan as set forth in paragraphs (1) to (3), inclusive, to govern the allocation of funds provided pursuant to this article. The Energy Commission's long-term goal shall be a fully competitive and self-sustaining California renewable energy supply. The investment plan shall be in accordance with all of the following:

(1) The investment plan's objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(2) An additional objective of the plan shall be to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance.

(3) The investment plan shall contain specific numerical targets, reflecting the projected impact of the plan, for both of the following:

(A) Increased quantity of California electrical generation produced from emerging technologies and from overall renewable resources.

(B) Increased supply of renewable generation available from facilities other than those selling to investor-owned utilities under contracts entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617).

(b) The Energy Commission shall, on an annual basis, evaluate progress on meeting the targets set forth in subparagraphs (A) and (B) of paragraph (3) of subdivision (a), or any substitute provisions adopted

by the Legislature upon review of the investment plan, and assess the impact of the investment plan on reducing the cost to Californians of renewable energy generation.

(c) In preparing these investment plans, the Energy Commission shall recommend allocations among all of the following:

(1) (A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.

(B) Allocations may not be made for renewable energy that is generated by a project that remains under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives for incremental new, repowered or refurbished renewable energy from existing projects under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, may be allowed in any month, if all of the following occur:

(i) The project's power purchase contract provides that all energy delivered and sold under the contract is paid at a price that does not exceed commission approved short-run avoided cost of energy.

(ii) Either of the following:

(I) The power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) If a project's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the power purchase contract, the power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

(2) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(3) Customer credits for renewables not under contract with a utility.

(4) Customer education.

(5) Incentives for reducing fuel costs that are confirmed to the satisfaction of the Energy Commission at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including but not limited to, air quality.

(6) Solar thermal generating resources that enhance the environmental value or reliability of the electricity system and that require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for purposes of this paragraph.

(7) Specified fuel cell technologies, if the Energy Commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the investment plan.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of renewable energy.

(8) Existing wind-generating resources, if the Energy Commission finds that the existing wind-generating resources are a cost-effective source of reliability and environmental benefits compared with other eligible sources, and that the existing wind-generating resources require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for the purposes of this paragraph.

(d) Commencing on January 1, 2002, public entities are not eligible to receive customer credits for renewables.

(e) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to this article shall be transferred to the Renewable Resource Trust Fund of the Energy Commission, to be held until further action by the Legislature. The Energy Commission shall prepare and submit to the Legislature, on or before March 31, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall also include an evaluation of and report to the Legislature regarding the appropriateness and structure of a mandatory state purchase of renewable energy. On or before March 31, 2006, the Energy Commission shall prepare an investment plan proposing the application of moneys collected between January 1, 2007,

and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

399.7. (a) In order to ensure that prudent investments in research, development and demonstration of energy efficient technologies continue to produce substantial economic, environmental, public health, and reliability benefits, it is the policy of this state and the intent of the Legislature that funds made available, upon appropriation, for energy-related public interest research, development and demonstration programs shall be used to advance science or technology that are not adequately provided by competitive and regulated markets.

(b) Notwithstanding any other provision of law, moneys collected for public-interest research, development and demonstration pursuant to this section shall be transferred to the Public Interest Research, Development, and Demonstration Fund of the Energy Commission to be held until further action by the Legislature. The Energy Commission shall prepare and submit to the Legislature, on or before March 1, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall address the recommendations of the PIER Independent Review Panel Report, dated March 2000, to either transform the RD&D program within the Energy Commission, or to administer it through, or in cooperation with, an external organization. The initial investment plan shall include criteria that will be used to determine that a project provides public benefits to California that are not adequately provided by competitive and regulated markets. On or before March 31, 2006, the Energy Commission shall prepare an investment plan addressing the application of moneys collected between January 1, 2007, and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation, shall pay a nonbypassable system benefits charge authorized pursuant to this article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and

demonstration programs authorized pursuant to this section beginning January 1, 2002, through January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars ($228,000,000) per year in total for energy efficiency and conservation activities, one hundred thirty-five million dollars ($135,000,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars ($62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381, 383, 383.5, and 445, and Chapter 7.1 (commencing with Section 25620) of the Public Resources Code.

(f) (1) On or before January 1, 2004, the Governor shall appoint an independent review panel including, but not limited to, members with expertise on the energy service needs of large and small electricity consumers, system reliability issues, and energy-related public policy. On or before January 1, 2005, the panel shall prepare and submit to the Legislature and the Energy Commission a report evaluating the energy efficiency, renewable energy, and research, development and demonstration programs funded under this section. Reasonable costs associated with the review in each of the three program categories, including technical assistance, may be charged to the relevant program

category under procedures to be developed by the commission for energy efficiency and by the Energy Commission for renewable energy and research, development and demonstration.

(2) The report shall also assess all of the following:

(A) Whether ongoing programs are consistent with the statutory goals.

(B) Whether potential synergies among the program categories described in paragraph (1) that could provide enhanced public value have been identified and incorporated in the programs.

(C) If established targets for increased renewable generation are likely to be achieved.

(D) What changes should be made to result in a more efficient use of public resources.

(3) The report shall also compare the Energy Commission's programs with efforts undertaken by other states and assess, as an alternative, the relative costs and benefits of adopting a tradeable minimum renewable energy requirement in California. The evaluation shall include recommendations intended to optimize renewable resource development at the least cost.

(4) For energy efficiency programs, the report shall include an evaluation of all of the following:

(A) The net benefits secured for residential customers, taking into account both public and private costs, including improvements in that customer group's ability to avoid or reduce consumption of relatively costly peak electricity.

(B) Whether the programs provide a balance of benefits to all sectors that contribute to the funding.

(C) The extent to which competition in energy markets including, but not limited to, load participation in ancillary services markets, and improvements in technology affect the continuing need for such programs.

(D) The status and growth of the private, competitive energy services industry that provides energy efficiency services and other energy products to customers.

(E) The commercial availability of any new technologies that reduce electricity demands during high-priced periods.

(F) Customers' willingness and ability to reduce consumption or adopt energy efficiency measures without program support.

(G) The extent to which the programs have delivered cost-effective energy efficiency not adequately provided by markets and as a result have reduced energy demand and consumption.

(H) The relative cost-effectiveness of program expenditures compared to other current or potential expenditures to enhance system reliability.

(5) The report shall include specific recommendations aimed at assisting the Legislature in determining whether to change or eliminate the collection of the system benefits charge on or after January 1, 2007.

(6) The panel may update and revise the report as needed.

(g) Promptly after receiving the panel's report, the commission shall convene a proceeding to address implementation of the panel's energy efficiency recommendations.

399.9. (a) No part of this article shall be construed to alter or affect the low-income funding provisions set forth in Section 382. Programs provided to low-income electricity customers, including but not limited to, targeted energy efficiency services and the California Alternative Rates for Energy Program shall continue to be funded as set forth in Section 382.

(b) Nothing in this article shall be construed to affect the jurisdiction of the commission over electric distribution service.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1051

An act to amend Sections 381, 383.5, and 394.25 of, and to add Article 15 (commencing with Section 399) to Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element

of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs which enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars ($32,000,000) per year; for Southern California Edison Company a level of ninety million dollars ($90,000,000) for each of the years l998, 1999, and 2000; fifty million dollars ($50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars ($106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels commencing January 1, 1998 through December 31, 2001: for San Diego Gas and Electric Company a level of four million dollars ($4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars ($28,500,000) per year; and for Pacific Gas and Electric Company a level of thirty million dollars ($30,000,000) per year.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars ($109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars ($136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars ($12,000,000) per year, the Southern California Edison Company shall

expend no less than forty-nine million five hundred thousand dollars ($49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars ($76,500,000) for the year 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars ($48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars ($75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars ($540,000,000).

(4) Up to fifty million dollars ($50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars ($90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(d) Notwithstanding any other provisions of this chapter, entities subject to the jurisdiction of the Public Utilities Commission shall extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars ($540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) The commission's authority to collect funds pursuant to this section for purposes of paragraph (3) of subdivision (b) shall become inoperative on March 31, 2002.

(g) For purposes of this article, ''emerging renewable technology'' means a new renewable technology, including, but not limited to, photovoltaic technology, that is determined by the California Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

SEC. 2. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) As used in this section, the following terms have the following meaning:

(1) ''In-state renewable electricity generation technology'' means biomass, solar thermal, photovoltaic, wind, geothermal, small hydropower of 30 megawatts or less, waste tire, digester gas, landfill gas, and municipal solid waste generation technologies, as described in the report, defined in paragraph (2), including any additions or enhancements thereto, that are produced in facilities located in this state and placed in operation after September 26, 1996, or that were operational prior to that date, and that are also certified under Section 292.2904 of Title 18 of the Code of Federal Regulations as a qualifying small power production facility either located in California, or that began selling electricity to a California electrical corporation prior to September 26, 1996, under a Standard Offer Power Purchase Agreement authorized by the California Public Utilities Commission.

(2) ''Report'' means the Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the State Energy Resources Conservation and Development Commission.

(b) (1) Forty-five percent of the money collected pursuant to paragraph (3) of subdivision (c) of Section 381, up to two hundred forty-three million dollars ($243,000,000), shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used to support in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(A) Funding for existing renewable electricity generation technologies shall be grouped into three technology tiers, as follows:

(i) Twenty-five percent of the money, up to one hundred thirty-five million dollars ($135,000,000), shall be used to fund first tier technologies, including biomass, solar thermal, and whole waste tire technologies.

(ii) Thirteen percent of the money, up to seventy million two hundred thousand dollars ($70,200,000) shall be used to fund second tier wind technologies.

(iii) Seven percent of the money, up to thirty-seven million eight hundred thousand dollars ($37,800,000), shall be used to fund third tier

technologies, including geothermal, small hydropower, digester gas, landfill gas, and municipal solid waste technologies.

(B) The State Energy Resources Conservation and Development Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The target price for Tier 1 technologies shall not be based on less than four cents ($0.04) per kilowatthour. The market clearing price for electricity shall be the energy prices paid to nonutility power generators as provided in Section 390.

(C) Funding for each type of existing in-state renewable electricity generation technology shall be reduced each year during the period from January 1, 1998, to January 1, 2002, to encourage the development of increasingly competitive technologies.

(D) Facilities that are eligible to receive funding pursuant to this section shall be certified in accordance with the requirements set forth in the report and may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under a fixed energy price payment under a long-term contract with an existing in-state electrical corporation.

(ii) Derives from utility-owned facility that is receiving, or is eligible to receive, recovery of above-market facility costs through a competitive transition charge.

(iii) Is used onsite, sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(c) (1) Thirty percent of the money, up to one hundred sixty-two million dollars ($162,000,000), collected pursuant to paragraph (3) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Funds to further the purposes of this subdivision may be committed for multiple years.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funds shall be allocated for proposed projects based on a competitive solicitation process whereby production incentives, not to exceed one and one-half cents ($0.015) per kilowatthour, are awarded to

the lowest bidders, provided that not more than 25 percent of the funds allocated pursuant to paragraph (1) may be awarded to a single project.

(B) Funds expended for production incentives shall be paid over a five-year period commencing on the date that a project begins electricity production, provided that the project shall be operational prior to January 1, 2002, unless the State Energy Resources Conservation and Development Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(C) The amount of funds expended shall be increased for each successive year during the period from January 1, 1998, to January 1, 2002, as fewer projects are expected to be funded during the first few years after funding becomes available.

(D) Facilities that are eligible to receive payments from the New Renewable Resources Account created pursuant to paragraph (2) of subdivision (a) of Section 445 of the Public Utilities Code shall be certified as specified in the report and may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments.

(ii) Is used onsite and is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by customer-owned electricity generating systems.

(E) Eligibility to compete for funds or to receive funds shall not be contingent upon the location or nature of the power purchaser.

(3) Repowered wind projects shall be eligible for funding under this subdivision if the new investment is at least 80 percent of the value of the repowered facility.

(d) (1) Ten percent of the money collected pursuant to paragraph (3) of subdivision (c) of Section 381, up to fifty-four million dollars ($54,000,000), shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Funds to further the purposes of this subdivision may be committed for multiple years.

(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with all of the following requirements:

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than four years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C) of paragraph (2) of subdivision (d), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts. The amount of the per-watt incentive shall decline over the term of the program, with a corresponding increase in the amount of total electrical capacity eligible for the incentive, thereby encouraging the manufacturers and suppliers of eligible systems to reduce system costs. Incentives shall be limited to a maximum percentage of the system price, as defined by the State Energy Resources Conservation and Development Commission, and the maximum incentive percentage shall decline over the term of the program, as shall the per-watt incentive, in amounts to be determined by the State Energy Resources Conservation and Development Commission.

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than ten kilowatts rated electrical capacity per customer site, provided that the technologies meet the emerging technology eligibility criteria contained in the report prepared by State Energy Resources Conservation and Development Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electrical energy demand, and shall not be owned by electrical corporations or publicly owned utilities, be located at a customer site that is not receiving distribution service from existing in-state electrical corporations. Not less than 60 percent of the available incentive funds shall be reserved for systems of 10 kilowatts rated electrical capacity or smaller, and not less than 15 percent of the funds shall be reserved for systems of 100 kilowatts rated electrical capacity or smaller. All eligible electricity generating system components shall be new and unused, and shall not have been previously placed in service in any other location or for any other application. Systems and their fuel resource shall be located on the premises of the end-use consumer of the electricity produced, and all eligible electricity generating systems shall be connected to the utility grid in California.

(D) The State Energy Resources Conservation and Development Commission shall also determine, in collaboration with industry and consumer interests, if a program provision limiting the amount of funds available for any single project is warranted, and determine how federal, state, or other funds or incentives not related to this section that are already available, or that may become available for eligible electricity generating systems, may impact the availability of funds allocated under this section, if at all. The emerging renewable technologies program shall be implemented not later than March 31, 1998, and incentives shall be available for eligible electricity generating systems that are placed in service after January 1, 1998, in accordance with the program provisions developed by the State Energy Resources Conservation and Development Commission. However, projects placed in service after January 1, 1998, and prior to September 1, 1998, shall not be subject to limits, if any, that may be determined by the commission, pursuant to this subparagraph.

(e) Fifteen percent of the money collected pursuant to paragraph (3) of subdivision (c) of Section 381, up to eighty-one million dollars ($81,000,000), shall be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies, as provided in the report, subject to the following requirements:

(1) (A) Fourteen percent of the money, up to seventy-five million six hundred thousand dollars ($75,600,000), shall be expended to provide customer credits for purchases of renewable energy produced by certified energy providers. Customer credits shall be awarded to California retail customers located in the service territory of an investor-owned utility that is subject to Section 381 who purchase qualifying renewable electric power through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity source claimed has been sold not more than once to a retail customer. Credits may be given without regard to whether the power supplier is also receiving funds under any other subdivision of this section.

(B) Credits awarded pursuant to this paragraph may be paid directly to energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits shall not exceed one and one-half cents ($0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, shall not exceed one thousand dollars ($1,000) per customer in 1998 and

1999. Thereafter, the State Energy Resources Conservation and Development Commission shall determine by January 10 of each year the average customer incentive rebate level paid over the preceding calendar year. In the event that the payments have remained at the one and one-half cents ($0.015) per kilowatthour cap over the preceding calendar year, the one thousand dollars ($1,000) per customer cap shall be removed for that calendar year, except that in no event shall more than fifteen million dollars ($15,000,000) of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(C) Funding for credits pursuant to this paragraph shall be increased for each successive year during the period from January 1, 1998, to January 1, 2002, to encourage the increasing use of those credits.

(D) The State Energy Resources Conservation and Development Commission shall develop interim criteria and procedures for the certification of energy providers and for the identification of energy purchasers who are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. Such criteria and procedures shall apply only to funding eligibility and shall not extend to other renewable marketing claims.

(E) The Public Utilities Commission shall notify the State Energy Resources Conservation and Development Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25.

(2) One percent of the money, up to five million four hundred thousand dollars ($5,400,000), shall be expended to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(f) (1) The State Energy Resources Conservation and Development Commission shall adopt guidelines governing the funding programs authorized under this section, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines shall not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph shall not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be deemed to satisfy the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(2) The State Energy Resources Conservation and Development Commission shall, in collaboration with eligible emerging technology industry stakeholders and consumer interests, complete the emerging

technology program design, as outlined in subdivision (d), and implement its provisions.

(3) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those described in the guidelines adopted by the State Energy Resources Conservation and Development Commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and certified to receive, payments or awards, including satisfying conditions specified by the State Energy Resources Conservation and Development Commission, shall not constitute the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(g) The State Energy Resources Conservation and Development Commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this section. Reports prepared pursuant to this section shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The reports shall also address the allocation of funds from interest on the accounts described in this section, money in the accounts described in subdivision (e) of Section 381, and money included in the accounts pursuant to Section 385. Notwithstanding paragraph (4) of subdivision (b) of Section 383 or subdivisions (b), (c), (d), and (e) of this section, money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report.

SEC. 3. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or

revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision (e) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State

Energy Resources Conservation and Development Commission pursuant to Section 383.5. This subdivision may not be construed to apply retroactively.

SEC. 4. Article 15 (commencing with Section 399) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 15. Reliable Electric Service Investments Act

399. (a) This article shall be known, and may be cited, as the Reliable Electric Service Investments Act.

(b) The Legislature finds and declares that safe, reliable electric service is of utmost importance to the citizens of this state, and its economy.

(c) The Legislature further finds and declares that in order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is essential that prudent investments continue to be made in all of the following areas:

(1) To protect the integrity of the electric distribution grid.

(2) To ensure an adequately sized and trained utility workforce.

(3) To ensure cost-effective energy efficiency improvements.

(4) To achieve a sustainable supply of renewable energy.

(5) To advance public interest research, development and demonstration programs not adequately provided by competitive and regulated markets.

(d) It is the intent of the Legislature to reaffirm, without requiring revision, California's doctrine, as reflected in regulatory and judicial decisions, regarding electrical corporations' reasonable opportunity to recover costs and investments associated with their electric distribution grid and the reasonable opportunity to attract capital for investment on reasonable terms.

(e) The Legislature further finds and declares all of the following:

(1) Acting under applicable constitutional and statutory authorities, the Public Utilities Commission and the boards of local publicly owned electric utilities have included in regulated electricity prices, investments that are essential to maintaining system reliability, reducing California electricity users' bills, and mitigating environmental costs of California users' electricity consumption.

(2) Among the most important of these ''system benefits'' investments categories are energy efficiency, renewable energy, and public interest research, development and demonstration (RD&D).

(3) Energy efficiency investments funded from California's usage-based charges on electricity distribution help improve systemwide reliability by reducing demand in times and areas of system congestion, and at the same time reduce all California electricity users'

costs. These investments also significantly reduce environmental costs associated with California's electricity consumption, including, but not limited to, degradation of the state's air, water, and land resources.

(4) California's in-state renewable energy resources help alleviate supply deficits that could threaten electric system reliability, reduce environmental costs associated with California's electricity consumption, and increase the diversity of the electricity system's fuel mix, reducing electricity users' exposure to fossil-fuel price volatility.

(5) California's public-interest research, development and demonstration (RD&D) investments enhance private and regulated sector investment in electricity system technologies, and are designed specifically to help ensure sustained improvement in the economic and environmental performance of the distribution, transmission, and generation and end-use systems that serve California electricity users.

(6) California has established a long tradition of recovering system benefits investments through usage-based electricity charges, which is reflected in at least two decades of electricity price regulation by the commission, the boards of local publicly owned electric utilities, and the mandate of the Legislature in Chapter 854 of the Statutes of 1996 (Assembly Bill 1890 of the 1995–96 Regular Session of the Legislature) and Chapter 905 of the Statutes of 1997 (Senate Bill 90 of the 1995–96 Regular Session of the Legislature).

(7) Unless the Legislature acts to extend the mandate of Chapter 854 of the Statutes of 1996 for minimum levels of usage based system benefits charges, California electricity users are at substantial risk of higher economic and environmental costs and degraded reliability.

399.1. (a) As used in this article, the term ''Energy Commission'' means the State Energy Resources Conservation and Development Commission.

(b) As used in this article, the term ''local publicly owned electric utility'' has the same meaning as set forth in subdivision (d) of Section 9604.

399.2. (a) (1) It is the policy of this state, and the intent of the Legislature, to reaffirm that each electrical corporation shall continue to operate its electric distribution grid in its service territory and shall do so in a safe, reliable, efficient, and cost-effective manner.

(2) In furtherance of this policy, it is the intent of the Legislature that each electrical corporation shall continue to be responsible for operating its own electric distribution grid including, but not limited to, owning, controlling, operating, managing, maintaining, planning, engineering, designing, and constructing its own electric distribution grid, emergency response and restoration, service connections, service turnons and turnoffs, and service inquiries relating to the operation of its electric distribution grid, subject to the commission's authority.

(b) In order to ensure the continued efficient use, and cost-effective, safe, and reliable operation of the electric distribution grid, each electrical corporation shall continue to operate its electric distribution grid in its service territory consistent with Section 330.

(c) In carrying out the purposes of this section, each electrical corporation shall continue to make reasonable investments in its electric distribution grid. Each electrical corporation shall continue to have a reasonable opportunity to fully recover from all customers of the electrical corporation, in a manner determined by the commission pursuant to this code, all of the following:

(1) Reasonable investments in its electric distribution grid.

(2) A reasonable return on the investments in its electric distribution grid.

(3) Reasonable costs to operate its electric distribution grid.

(d) For purposes of this section, the term "electric distribution grid" means those facilities owned or operated by an electrical corporation that are not under the control of the Independent System Operator and that are used to transmit, deliver, or furnish electricity for light, heat, or power.

(e) Nothing in this section shall be construed to alter or to affect any of the following:

(1) Section 216, 218, or 2827.

(2) The authority of the commission to establish and enforce standards and tariff conditions for the interconnection of customer-owned facilities to the electric distribution grid.

(3) The ratemaking authority of the commission under this code.

(4) The authority of the commission to establish rules governing the extension of service to new customers.

(f) Nothing in this section shall be construed to alter or affect any authority or lack of authority of the commission regarding the ownership and operation of new electric generation used in whole, or in part, for the purpose of maintaining or enhancing the reliability of the electric distribution grid.

(g) Nothing in this section diminishes or expands any existing authority of a local governmental entity.

(h) The commission shall require every electrical corporation operating an electric distribution grid to inform all customers who request residential service connections via telephone of the availability of the California Alternative Rates for Energy (CARE) program and how they may qualify for and obtain these services and shall accept applications for the CARE program according to procedures specified by the commission. Electrical corporations shall recover the reasonable costs of implementing this subdivision.

399.3. Nothing in Section 399.2 shall be construed to preclude any of California's local publicly owned electric utilities from exercising authority to operate their electric distribution grid as provided under law.

399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and the intent of the Legislature that the commission shall continue to administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority.

(2) As used in this section, the term ''energy efficiency'' includes, but is not limited to, cost-effective activities to achieve peak load reduction that improve end-use efficiency, lower customers' bills, and reduce system needs.

(b) The commission, in evaluating energy efficiency investments under its existing statutory authorities, shall also ensure both of the following:

(1) That local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.

(2) That no energy efficiency funds are used to provide incentives for the purchase of new energy-efficient refrigerators.

399.6. (a) In order to optimize public investment and ensure that the most cost-effective and efficient investments in renewable resources are vigorously pursued, the Energy Commission shall create an investment plan as set forth in paragraphs (1) to (3), inclusive, to govern the allocation of funds provided pursuant to this article. The Energy Commission's long-term goal shall be a fully competitive and self-sustaining California renewable energy supply. The investment plan shall be in accordance with all of the following:

(1) The investment plan's objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(2) An additional objective of the plan shall be to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance.

(3) The investment plan shall contain specific numerical targets, reflecting the projected impact of the plan, for both of the following:

(A) Increased quantity of California electrical generation produced from emerging technologies and from overall renewable resources.

(B) Increased supply of renewable generation available from facilities other than those selling to investor-owned utilities under contracts entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617).

(b) The Energy Commission shall, on an annual basis, evaluate progress on meeting the targets set forth in subparagraphs (A) and (B) of paragraph (3) of subdivision (a), or any substitute provisions adopted by the Legislature upon review of the investment plan, and assess the impact of the investment plan on reducing the cost to Californians of renewable energy generation.

(c) In preparing these investment plans, the Energy Commission shall recommend allocations among all of the following:

(1) (A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.

(B) Allocations may not be made for renewable energy that is generated by a project that remains under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives for incremental new, repowered, or refurbished renewable energy from existing projects under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, may be allowed in any month, if all of the following occur:

(i) The project's power purchase contract provides that all energy delivered and sold under the contract is paid at a price that does not exceed commission approved short-run avoided cost of energy.

(ii) Either of the following:

(I) The power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) If a project's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the power purchase contract, the power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of

the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

(2) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(3) Customer credits for renewables not under contract with a utility.

(4) Customer education.

(5) Incentives for reducing fuel costs that are confirmed to the satisfaction of the Energy Commission at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including but not limited to, air quality.

(6) Solar thermal generating resources that enhance the environmental value or reliability of the electricity system and that require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for purposes of this paragraph.

(7) Specified fuel cell technologies, if the Energy Commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the investment plan.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of renewable energy.

(8) Existing wind-generating resources, if the Energy Commission finds that the existing wind-generating resources are a cost-effective source of reliability and environmental benefits compared with other eligible sources, and that the existing wind-generating resources require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for the purposes of this paragraph.

(d) Commencing on January 1, 2002, public entities are not eligible to receive customer credits for renewables.

(e) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to this article shall be transferred to the Renewable Resource Trust Fund of the Energy Commission, to be held until further action by the Legislature. The Energy Commission shall prepare and submit to the Legislature, on or before March 31, 2001, an initial investment plan for these moneys, addressing the application of

moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall also include an evaluation of and report to the Legislature regarding the appropriateness and structure of a mandatory state purchase of renewable energy. On or before March 31, 2006, the Energy Commission shall prepare an investment plan proposing the application of moneys collected between January 1, 2007, and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

399.7. (a) In order to ensure that prudent investments in research, development and demonstration of energy efficient technologies continue to produce substantial economic, environmental, public health, and reliability benefits, it is the policy of this state and the intent of the Legislature that funds made available, upon appropriation, for energy related public interest research, development and demonstration programs shall be used to advance science or technology that are not adequately provided by competitive and regulated markets.

(b) Notwithstanding any other provision of law, moneys collected for public-interest research, development and demonstration pursuant to this section shall be transferred to the Public Interest Research, Development, and Demonstration Fund of the Energy Commission to be held until further action by the Legislature. The Energy Commission shall prepare and submit to the Legislature, on or before March 1, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall address the recommendations of the PIER Independent Review Panel Report, dated March 2000, to either transform the RD&D program within the Energy Commission, or to administer it through, or in cooperation with, an external organization. The initial investment plan shall include criteria that will be used to determine that a project provides public benefits to California that are not adequately provided by competitive and regulated markets. On or before March 31, 2006, the Energy Commission shall prepare an investment plan addressing the application of moneys collected between January 1, 2007, and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation, shall pay a nonbypassable system benefits charge authorized pursuant to this

article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, through January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars ($228,000,000) per year in total for energy efficiency and conservation activities, one hundred thirty-five million dollars ($135,000,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars ($62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381, 383, 383.5, and 445, and Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code.

(f) (1) On or before January 1, 2004, the Governor shall appoint an independent review panel including, but not limited to, members with expertise on the energy service needs of large and small electricity

consumers, system reliability issues, and energy-related public policy. On or before January 1, 2005, the panel shall prepare and submit to the Legislature and the Energy Commission a report evaluating the energy efficiency, renewable energy, and research, development and demonstration programs funded under this section. Reasonable costs associated with the review in each of the three program categories, including technical assistance, may be charged to the relevant program category under procedures to be developed by the commission for energy efficiency and by the Energy Commission for renewable energy and research development and demonstration.

(2) The report shall also assess all of the following:

(A) Whether ongoing programs are consistent with the statutory goals.

(B) Whether potential synergies among the program categories described in paragraph (1) that could provide enhanced public value have been identified and incorporated in the programs.

(C) If established targets for increased renewable generation are likely to be achieved.

(D) What changes should be made to result in a more efficient use of public resources.

(3) The report shall also compare the Energy Commission's programs with efforts undertaken by other states and assess, as an alternative, the relative costs and benefits of adopting a tradeable minimum renewable energy requirement in California. The evaluation shall include recommendations intended to optimize renewable resource development at the least cost.

(4) For energy efficiency programs, the report shall include an evaluation of all of the following:

(A) The net benefits secured for residential customers, taking into account both public and private costs, including improvements in that customer group's ability to avoid or reduce consumption of relatively costly peak electricity.

(B) Whether the programs provide a balance of benefits to all sectors that contribute to the funding.

(C) The extent to which competition in energy markets including, but not limited to, load participation in ancillary services markets, and improvements in technology affect the continuing need for such programs.

(D) The status and growth of the private, competitive energy services industry that provides energy efficiency services and other energy products to customers.

(E) The commercial availability of any new technologies that reduce electricity demands during high-priced periods.

(F) Customers' willingness and ability to reduce consumption or adopt energy efficiency measures without program support.

(G) The extent to which the programs have delivered cost-effective energy efficiency not adequately provided by markets and as a result have reduced energy demand and consumption.

(H) The relative cost effectiveness of program expenditures compared to other current or potential expenditures to enhance system reliability.

(5) The report shall include specific recommendations aimed at assisting the Legislature in determining whether to change or eliminate the collection of the system benefits charge on or after January 1, 2007.

(6) The panel may update and revise the report as needed.

(g) Promptly after receiving the panel's report, the commission shall convene a proceeding to address implementation of the panel's energy efficiency recommendations.

399.9. (a) No part of this article shall be construed to alter or affect the low-income funding provisions set forth in Section 382. Programs provided to low-income electricity customers, including, but not limited to, targeted energy efficiency services and the California Alternative Rates for Energy Program shall continue to be funded as set forth in Section 382.

(b) Nothing in this article shall be construed to affect the jurisdiction of the commission over electric distribution service.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1052

An act to amend Sections 6456, 6592, 6832, 7076.7, 7091, 7657, 8269, 8877 9033, 9269, 11253, 11597, 30282, 30354, 30458.9, 32255, 32389, 32469, 38452, 38504, 40102, 40167, 40209, 41096, 41127.6, 41169, 43157, 43448, 43520, 45155, 45609, 45865, 46156, 46464, 46620, 50112.2, 50138.6, 50156.9, 55044, 55209, 55330, 60209, 60493, and 60630 of, and to add Sections 6704, 6832.6, 7056.6, 8128.1, 8257, 8958, 9033.5, 9152.1, 9255.2, 11253.5, 11453, 11553.5, 11656, 11657, 30316, 30354.5, 30362.1, 30455.5, 32387.5, 32389.5, 32402.1,

32455.5, 38503.5, 38504.5, 38602.5, 38707, 38708, 40112.1, 40156, 40167.5, 40176, 41101.1, 41123.6, 41127.7, 41132, 43444.3, 43448.5, 43452.1, 43506, 45605.5, 45609.5, 45652.1, 45855.5, 46407, 46464.5, 46502.1, 46606, 50136.5, 50138.7, 50140.1, 50155.5, 55205.5, 55209.5, 55222.1, 55305, 60408, 60493.5, 60522.1, and 60609.5 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 6456 of the Revenue and Taxation Code is amended to read:

6456. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), ''reason to know'' means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, ''attributable to one spouse'' may be determined by whether a spouse rendered substantial service as a retailer of taxable items to which the understatement is attributable. If neither spouse rendered substantial services as a retailer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

SEC. 2. Section 6592 of the Revenue and Taxation Code is amended to read:

6592. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2.

(b) Except as provided in subdivision (c) any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

SEC. 3. Section 6704 is added to the Revenue and Taxation Code, to read:

6704. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a retailer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 6703 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 3.5. Section 6832 of the Revenue and Taxation Code is amended to read:

6832. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated

installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the due date of the tax, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 6565.

SEC. 4. Section 6832.6 is added to the Revenue and Taxation Code, to read:

6832.6. In the case of liability for use tax arising from the board's auxiliary collection provisions pursuant to Article 3 (commencing with Section 6291) of Chapter 3.5, or use tax liability arising from purchases described in Section 6405, the board shall provide notice to purchasers in simple and nontechnical language of its authorization under Section 6832 to enter into an agreement to accept the payment of use tax in installments. The notice shall be mailed to purchasers concurrently with the mailing of the return, notice of determination, or notice of redetermination.

SEC. 5. Section 7056.6 is added to the Revenue and Taxation Code, to read:

7056.6. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 5 (commencing with Section 6451), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 5.5. Section 7076.7 of the Revenue and Taxation Code is amended to read:

7076.7. This article shall remain in effect only until January 1, 2003, and as of that date is repealed; however, any managed audit commenced pursuant to Section 7076.3 before January 1, 2003, may be completed by the board thereafter and the person whose account is audited shall

remain eligible for the interest rate computation specified in Section 7076.5.

SEC. 6. Section 7091 of the Revenue and Taxation Code is amended to read:

7091. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

SEC. 8. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7660, and 7713.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 8.5. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7659.9, 7660, and 7713.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 9. Section 8128.1 is added to the Revenue and Taxation Code, to read:

8128.1. (a) The limitation period specified in Section 8128 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 10. Section 8257 is added to the Revenue and Taxation Code, to read:

8257. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 5 (commencing with Section 7651), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or

imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 11. Section 8269 of the Revenue and Taxation Code is amended to read:

8269. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 13. Section 8877 of the Revenue and Taxation Code is amended to read:

8877. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8801, 8854, and 8876.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 13.5. Section 8877 of the Revenue and Taxation Code is amended to read:

8877. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8760, 8801, 8854, and 8876.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 14. Section 8958 is added to the Revenue and Taxation Code, to read:

8958. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a user or other person liable for any amount under this part that the person's employer withheld earnings for tax as pursuant to Section 8957 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer, and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 15. Section 9033 of the Revenue and Taxation Code is amended to read:

9033. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person

complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 8854.

SEC. 16. Section 9033.5 is added to the Revenue and Taxation Code, to read:

9033.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 9033 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 17. Section 9152.1 is added to the Revenue and Taxation Code, to read:

9152.1. (a) The limitation period specified in Section 9152 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 18. Section 9255.2 is added to the Revenue and Taxation Code, to read:

9255.2. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 8751), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 19. Section 9269 of the Revenue and Taxation Code is amended to read:

9269. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 19.5. Section 11253 of the Revenue and Taxation Code is amended to read:

11253. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and

inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) The notice requirement in subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the due date of the tax bill, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 11341.

SEC. 20. Section 11253.5 is added to the Revenue and Taxation Code, to read:

11253.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 11253 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 20.5. Section 11453 is added to the Revenue and Taxation Code, to read:

11453. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 11452 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld.

Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 21. Section 11553.5 is added to the Revenue and Taxation Code, to read:

11553.5. (a) The limitation period specified in Section 11553 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 21.3. Section 11597 of the Revenue and Taxation Code is amended to read:

11597. (a) Any penalty provided for in Section 11341, 11354, 11405, or 11430 may be canceled by the board upon a finding that (1) the failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, provided the principal payment is made within 30 days after the delinquency date, or (2) there was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of tax due is made within 10 days after the notice of shortage is mailed by the board.

(b) Except as provided in subdivision (c), any taxpayer seeking cancellation of the penalty shall file with the board a petition for cancellation or refund within 20 days of payment of the principal amount of the tax or within 20 days after the board mails notice of the entry of the penalty, whichever date is later. The petition shall be accompanied by a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

SEC. 21.5. Section 11656 is added to the Revenue and Taxation Code, to read:

11656. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 2 (commencing with Section 11251) of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 21.7. Section 11657 is added to the Revenue and Taxation Code, to read:

11657. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or denial of a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2001.

SEC. 23. Section 30282 of the Revenue and Taxation Code is amended to read:

30282. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the penalty provided by Sections 30171, 30221, 30264, and 30281.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 23.5. Section 30282 of the Revenue and Taxation Code is amended to read:

30282. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the penalty provided by Sections 30171, 30190, 30221, 30264, and 30281.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 24. Section 30316 is added to the Revenue and Taxation Code, to read:

30316. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a distributor or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 30315 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited

to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 25. Section 30354 of the Revenue and Taxation Code is amended to read:

30354. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 30264.

SEC. 26. Section 30354.5 is added to the Revenue and Taxation Code, to read:

30354.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 30354 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year and the remaining balance as of the end of the year.

SEC. 27. Section 30362.1 is added to the Revenue and Taxation Code, to read:

30362.1. (a) The limitation period specified in Section 30362 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 28. Section 30455.5 is added to the Revenue and Taxation Code, to read:

30455.5. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 30181) of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return, or

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 29. Section 30458.9 of the Revenue and Taxation Code is amended to read:

30458.9. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the state was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 30. Section 32255 of the Revenue and Taxation Code is amended to read:

32255. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 32252, 32291, 32292, and 32305.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 30.5. Section 32255 of the Revenue and Taxation Code is amended to read:

32255. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 32252, 32260, 32291, 32292, and 32305.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty

of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 32. Section 32387.5 is added to the Revenue and Taxation Code, to read:

32387.5. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a manufacturer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 32387 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 33. Section 32389 of the Revenue and Taxation Code is amended to read:

32389. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 32305.

SEC. 34. Section 32389.5 is added to the Revenue and Taxation Code, to read:

32389.5. The board, beginning no later than July 1, 2000, shall provide each taxpayer who has an installment payment agreement in effect under Section 32389 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 35. Section 32402.1 is added to the Revenue and Taxation Code, to read:

32402.1. (a) The limitation period specified in Section 32402 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by

reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existences thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 36. Section 32455.5 is added to the Revenue and Taxation Code, to read:

32455.5. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 6 of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 37. Section 32469 of the Revenue and Taxation Code is amended to read:

32469. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 37.5. Section 38452 of the Revenue and Taxation Code is amended to read:

38452. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 38421 and 38451.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

SEC. 37.7. Section 38503.5 is added to the Revenue and Taxation Code, to read:

38503.5. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 38503 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the

employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 37.9. Section 38504 of the Revenue and Taxation Code is amended to read:

38504. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment

agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) The notice requirement in subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date in which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 38446.

SEC. 38. Section 38504.5 is added to the Revenue and Taxation Code, to read:

38504.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 38504 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 39. Section 38602.5 is added to the Revenue and Taxation Code, to read:

38602.5. (a) The limitation period specified in Section 38602 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 39.3. Section 38707 is added to the Revenue and Taxation Code, to read:

38707. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 5 of this part, or any

person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 39.5. Section 38708 is added to the Revenue and Taxation Code, to read:

38708. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or denial of a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) This section shall be operative for claims filed on or after January 1, 2001.

SEC. 41. Section 40102 of the Revenue and Taxation Code is amended to read:

40102. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond

the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 40081, 40096, and 40101.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 41.5. Section 40102 of the Revenue and Taxation Code is amended to read:

40102. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 40067, 40081, 40096, and 40101.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 42. Section 40112.1 is added to the Revenue and Taxation Code, to read:

40112.1. (a) The limitation period specified in Section 40112 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 43. Section 40156 is added to the Revenue and Taxation Code, to read:

40156. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a user or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 40155 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 44. Section 40167 of the Revenue and Taxation Code is amended to read:

40167. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any surcharges due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the person liable for the surcharge may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the surcharge, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of surcharge, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 40096.

SEC. 45. Section 40167.5 is added to the Revenue and Taxation Code, to read:

40167.5. The board shall, beginning no later than January 1, 2001, provide each taxpayer who has an installment payment agreement in effect under Section 40167 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 46. Section 40176 is added to the Revenue and Taxation Code, to read:

40176. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 40051), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 47. Section 40209 of the Revenue and Taxation Code is amended to read:

40209. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 49. Section 41096 of the Revenue and Taxation Code is amended to read:

41096. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 41080, 41090, and 41095.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty

of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 49.5. Section 41096 of the Revenue and Taxation Code is amended to read:

41096. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 41060, 41080, 41090, and 41095.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 50. Section 41101.1 is added to the Revenue and Taxation Code, to read:

41101.1. (a) The limitation period specified in Section 41101 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation of rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 51. Section 41123.6 is added to the Revenue and Taxation Code, to read:

41123.6. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from any person

liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 41123.5 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 52. Section 41127.6 of the Revenue and Taxation Code is amended to read:

41127.6. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 41090.

SEC. 53. Section 41127.7 is added to the Revenue and Taxation Code, to read:

41127.7. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 41127.6 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 54. Section 41132 is added to the Revenue and Taxation Code, to read:

41132. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 41050), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 55. Section 41169 of the Revenue and Taxation Code is amended to read:

41169. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 56. Section 43157 of the Revenue and Taxation Code is amended to read:

43157. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 43155 and 43306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 56.5. Section 43157 of the Revenue and Taxation Code is amended to read:

43157. (a) If the board finds that a person's failure to make a timely return, prepayment, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 43155, 43170, and 43306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 58. Section 43444.3 is added to the Revenue and Taxation Code, to read:

43444.3. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 43444.2 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 59. Section 43448 of the Revenue and Taxation Code is amended to read:

43448. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 43306.

SEC. 60. Section 43448.5 is added to the Revenue and Taxation Code, to read:

43448.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 43448 an annual statement setting forth the initial

balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 61. Section 43452.1 is added to the Revenue and Taxation Code, to read:

43452.1. (a) The limitation period specified in Section 43452 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 62. Section 43506 is added to the Revenue and Taxation Code, to read:

43506. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 43151), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 63. Section 43520 of the Revenue and Taxation Code is amended to read:

43520. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 64. Section 45155 of the Revenue and Taxation Code is amended to read:

45155. (a) If the board finds that a person's failure to make a timely report or return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 45153 and 45306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 64.5. Section 45155 of the Revenue and Taxation Code is amended to read:

45155. (a) If the board finds that a person's failure to make a timely report or return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise

of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 45153, 45160, and 45306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 66. Section 45605.5 is added to the Revenue and Taxation Code, to read:

45605.5. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 45605 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first date that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 67. Section 45609 of the Revenue and Taxation Code is amended to read:

45609. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fee, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 45306.

SEC. 68. Section 45609.5 is added to the Revenue and Taxation Code, to read:

45609.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 45609 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 69. Section 45652.1 is added to the Revenue and Taxation Code, to read:

45652.1. (a) The limitation period specified in Section 45652 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 70. Section 45855.5 is added to the Revenue and Taxation Code, to read:

45855.5. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 45151), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 71. Section 45865 of the Revenue and Taxation Code is amended to read:

45865. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 72. Section 46156 of the Revenue and Taxation Code is amended to read:

46156. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 46154, 46251, and 46356.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 72.5. Section 46156 of the Revenue and Taxation Code is amended to read:

46156. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 46154, 46160, 46251, and 46356.

(b) Except as provided in subdivision (c) any person seeking to be relieved of the penalty shall file with the board a statement, under penalty

of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 74. Section 46407 is added to the Revenue and Taxation Code, to read:

46407. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines, upon receiving information from a fee payer or other person liable for any amount under this part, that the person's employer withheld earnings for taxes pursuant to Section 46406 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 75. Section 46464 of the Revenue and Taxation Code is amended to read:

46464. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination become final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 46356.

SEC. 76. Section 46464.5 is added to the Revenue and Taxation Code, to read:

46464.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 46464 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 77. Section 46502.1 is added to the Revenue and Taxation Code, to read:

46502.1. (a) The limitation period specified in Section 46502 shall be suspended during any period of the person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by

reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse of any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 78. Section 46606 is added to the Revenue and Taxation Code, to read:

46606. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 46151), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 79. Section 46620 of the Revenue and Taxation Code is amended to read:

46620. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 80. Section 50112.2 of the Revenue and Taxation Code is amended to read:

50112.2. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 50112 and 50119.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 80.5. Section 50112.2 of the Revenue and Taxation Code is amended to read:

50112.2. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalties provided by Sections 50112, 50112.7, and 50119.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 82. Section 50136.5 is added to the Revenue and Taxation Code, to read:

50136.5. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 50136 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 83. Section 50138.6 of the Revenue and Taxation Code is amended to read:

50138.6. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 50119.

SEC. 84. Section 50138.7 is added to the Revenue and Taxation Code, to read:

50138.7. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 50138.6 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 85. Section 50140.1 is added to the Revenue and Taxation Code, to read:

50140.1. (a) The limitation period specified in Section 50140 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of

the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to a period of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 86. Section 50155.5 is added to the Revenue and Taxation Code, to read:

50155.5. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 50109), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 87. Section 50156.9 of the Revenue and Taxation Code is amended to read:

50156.9. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refunds.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 89. Section 55044 of the Revenue and Taxation Code is amended to read:

55044. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 55042 and 55086.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 89.5. Section 55044 of the Revenue and Taxation Code is amended to read:

55044. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 55042, 55050, and 55086.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 90. Section 55205.5 is added to the Revenue and Taxation Code, to read:

55205.5. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a fee payer or

other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 55205 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 91. Section 55209 of the Revenue and Taxation Code is amended to read:

55209. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 55086.

SEC. 92. Section 55209.5 is added to the Revenue and Taxation Code, to read:

55209.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 55209 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 93. Section 55222.1 is added to the Revenue and Taxation Code, to read:

55222.1. (a) The limitation period specified in Section 55222 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or ran be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 94. Section 55305 is added to the Revenue and Taxation Code, to read:

55305. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 55041), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 95. Section 55330 of the Revenue and Taxation Code is amended to read:

55330. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of

reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was found unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 96. Section 60209 of the Revenue and Taxation Code is amended to read:

60209. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 60207, 60301, 60338, and 60355.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 96.5. Section 60209 of the Revenue and Taxation Code is amended to read:

60209. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 60207, 60250, 60301, 60338, and 60355.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 98. Section 60408 is added to the Revenue and Taxation Code, to read:

60408. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines receiving information from a supplier or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant Section 60407 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on

payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

SEC. 99. Section 60493 of the Revenue and Taxation Code is amended to read:

60493. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review

of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 60355.

SEC. 100. Section 60493.5 is added to the Revenue and Taxation Code, to read:

60493.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 60493 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 101. Section 60522.1 is added to the Revenue and Taxation Code, to read:

60522.1. (a) The limitation period specified in Section 60522 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 102. Section 60609.5 is added to the Revenue and Taxation Code, to read:

60609.5. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 6 (commencing with Section 60201), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

SEC. 103. Section 60630 of the Revenue and Taxation Code is amended to read:

60630. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer shall be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) The board's proposed award under this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 104. Sections 8.5, 13.5, 23.5, 30.5, 41.5, 49.5, 57.5, 64.5, 72.5, 80.5, 89.5, and 96.5 of this bill incorporate amendments to Sections 7657, 8877, 30282, 32255, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, and 60209 of the Revenue and Taxation Code proposed by both this bill and AB 2894. These sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Sections 7657, 8877, 30282, 32255, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, and 60209 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2894, in which case Sections 8, 13, 23, 30, 41, 49, 57, 64, 72, 80, 89, and 96 of this bill shall not become operative.

SEC. 105. 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 1053

An act to amend Sections 7851, 7855, 7861, 7863, 7865, 7891, 7892, 7893, 7895, 7931, 7934, 7956, 7958, 8101, 8103, 8106, 8106.1, 8106.5, 8126, 8128, 8130, 8146, 8150, 8152, 8253, 8263, 8270, 8351, 8352.1, 8352.4, 8502, 60012, and 60023 of, to add Chapter 2 (commencing with Section 7360) and Chapter 2.5 (commencing with Section 7385) to Part 2 of Division 2 of, to repeal Sections 8106.7 and 8127.6 of, to repeal Chapter 2 (commencing with Section 7351) and Chapter 2.5 (commencing with Section 7370) of Part 2 of Division 2 of, to repeal and add Chapter 1 (commencing with Section 7301), Chapter 3 (commencing with Section 7401), Chapter 4 (commencing with Section 7451), Chapter 5 (commencing with Section 7651), Chapter 9 (commencing with Section 8301), and Chapter 11 (commencing with Section 8401) of Part 2 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 1 (commencing with Section 7301) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 2. Chapter 1 (commencing with Section 7301) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

7301. This part is known and may be cited as the ''Motor Vehicle Fuel Tax Law.''

7302. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

7303. ''Aircraft'' means any powered contrivance designed for navigation in the air except a rocket or missile.

7304. ''Alcohol'' includes ethanol and methanol.

7305. ''Approved terminal or refinery'' means a terminal or refinery that is operated by a licensed supplier.

7306. ''Aviation gasoline'' means all special grades of gasoline that are suitable for use in aviation reciprocating engines.

7307. ''Blended motor vehicle fuel'' means any mixture of motor vehicle fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. Blended motor vehicle fuel also means any conversion of a liquid into motor vehicle fuel. ''Conversion of a liquid into motor vehicle fuel'' occurs when any liquid that is not included in the definition of motor vehicle fuel and that is outside the bulk transfer/terminal system is sold as motor vehicle fuel, delivered as motor vehicle fuel, or represented to be motor vehicle fuel.

7308. ''Blender'' includes any person that produces or converts blended motor vehicle fuel outside the bulk transfer/terminal system.

7309. ''Bulk transfer'' means any transfer of motor vehicle fuel by pipeline or vessel.

7310. ''Bulk transfer/terminal system'' means the motor vehicle fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Motor vehicle fuel in the fuel tank of any engine, or in any railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

7311. ''Enterer'' includes any person who is the importer of record (under federal customs law) with respect to motor vehicle fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the enterer. If there is no importer of record of motor vehicle fuel entered into this state, the owner of the motor vehicle fuel at the time it is brought into this state is the enterer.

7312. ''Entry'' means the importing of motor vehicle fuel into this state. However, motor vehicle fuel brought into this state in the fuel tank of a motor vehicle or aircraft shall not be deemed to be an ''entry'' if not removed from the fuel tank except as used for the operation of that motor vehicle or aircraft, except to the extent that the motor vehicle fuel was acquired tax free for export or a refund of tax was claimed as a result of exportation from the state from which that motor vehicle fuel was transported into this state.

7313. ''Finished gasoline'' means all products (including gasohol) that are commonly known or sold as gasoline.

7314. ''Fuel tank'' means any receptacle on a motor vehicle from which fuel is supplied for the operation of a motor vehicle.

7315. ''Gallon'' means the United States gallon of 231 cubic inches or the volumetric gallon adjusted to 60 degrees Fahrenheit when the invoice and settlement is made on the temperature corrected gallonage.

7316. ''Gasoline'' means finished gasoline and gasoline blendstocks.

7317. ''Gasoline blendstocks'' means any petroleum product component of gasoline.

7318. ''Gasohol'' means all blends of gasoline, and alcohol containing more than 15 percent gasoline.

7319. ''Highway'' includes a way or place, of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

7320. ''Highway vehicle operator/fueler'' includes (a) any person that owns, operates, or otherwise controls a motor vehicle fuel-powered highway vehicle and places, or causes to be placed, motor vehicle fuel or any liquid into the fuel tank of a motor vehicle fuel-powered highway vehicle; or (b) any person who sells motor vehicle fuel on which a claim for refund has been allowed, or any liquid on which tax has not been imposed.

7321. ''In this state'' or ''in the state'' means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

7322. ''Industrial user'' means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

7323. ''Licensed industrial user'' means any industrial user that is licensed pursuant to Section 7460.

7324. ''Licensed supplier'' includes any enterer, position holder, refiner, terminal operator, or throughputter that is licensed as a supplier pursuant to Section 7451.

7325. ''Motor vehicle'' includes every self-propelled vehicle operated or suitable for operation on the highway, except a vehicle used exclusively upon stationary rails or tracks.

7326. ''Motor vehicle fuel'' includes gasoline, aviation gasoline, and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or is usable in an explosion type of engine. It does not include diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

7327. ''Motor vehicle fuel-powered highway vehicle'' means a motor vehicle that is operated by a motor vehicle fuel-powered engine on a highway.

7328. ''Motor vehicle fuel-powered train'' means any motor vehicle fuel-powered equipment or machinery that rides on rails, including equipment or machinery that transports passengers, freight, or a combination of both passengers and freight, and equipment or machinery that only carries freight or passengers of the operator thereof. Thus, the term includes a locomotive, work train, switching engine, and track maintenance machine.

7329. ''Person'' includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

7330. ''Pipeline'' means any pipeline used at any time to transport motor vehicle fuel.

7331. ''Pipeline operator'' includes any person that owns, operates, or otherwise controls a pipeline.

7332. ''Position holder'' includes any person that holds the inventory position in the motor vehicle fuel, as reflected on the records of the terminal operator. A person holds the inventory position in motor vehicle fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the motor vehicle fuel. ''Position holder'' includes a terminal operator that owns motor vehicle fuel in its terminal.

7333. ''Rack'' means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

7334. ''Refiner'' includes any person that owns, operates, or otherwise controls a refinery.

7335. ''Refinery'' means a facility used to produce motor vehicle fuel from crude oil, unfinished oils, natural gas liquids, or other

hydrocarbons, and from which motor vehicle fuel may be removed by pipeline, by vessel, or at a rack.

7336. ''Removal'' means any physical transfer of motor vehicle fuel, and any use of motor vehicle fuel other than as a material in the production of motor vehicle fuel. However, motor vehicle fuel is not removed when it evaporates or is otherwise lost or destroyed.

7337. ''Sale'' means:

(a) The transfer of title to, or substantial incidents of ownership in, motor vehicle fuel (other than motor vehicle fuel in a terminal) to a buyer for consideration, which may consist of money, services, or other property.

(b) The transfer of the inventory position in the motor vehicle fuel in a terminal if the buyer becomes the position holder with respect to the taxable fuel.

7338. ''Supplier'' includes any person who is any of the following:

(a) Blender, as defined in Section 7308.

(b) Enterer, as defined in Section 7311.

(c) Position holder, as defined in Section 7332.

(d) Refiner, as defined in Section 7334.

(e) Terminal operator, as defined in Section 7340.

(f) Throughputter, as defined in Section 7341.

7339. ''Terminal'' means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack.

7340. ''Terminal operator'' includes any person that owns, operates, or otherwise controls a terminal.

7341. ''Throughputter'' means any person that owns motor vehicle fuel within the bulk transfer/terminal system (other than in a terminal) or is a position holder.

7342. ''Train operator'' includes any person that owns, operates, or controls a motor vehicle fuel-powered train and is licensed as a railroad by a state or federal agency.

7343. ''Vessel'' includes a barge and every description of motor craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

7344. ''Vessel operator'' includes any person that owns, operates, or otherwise controls a vessel.

SEC. 3. Chapter 2 (commencing with Section 7351) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 4. Chapter 2 (commencing with Section 7360) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

7360. (a) A tax of eighteen cents ($0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(b) If the federal fuel tax is reduced below the rate of nine cents ($0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be recalculated by an amount so that the combined state and federal tax rate per gallon equals twenty-seven cents ($0.27).

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt under this section.

7361. (a) For the privilege of storing, for the purpose of removal, sale, or use, every distributor owning motor vehicle fuel on January 1, 2002, shall pay a tax of eighteen cents ($0.18) for each gallon of motor vehicle fuel according to the volumetric measure thereof, on which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, and tax would have been imposed on any prior removal, entry, or sale of motor vehicle fuel had Sections 7360 to 7363, inclusive, applied to motor vehicle fuel for the period before January 1, 2002.

(b) For purposes of subdivision (a):

(1) ''Storing'' includes the possession in a storage facility, except an approved terminal or refinery, of motor vehicle fuel as well as the motor vehicle fuel purchased from and invoiced by the seller prior to January 1, 2002, and in transit on that date.

(2) ''Owning'' means having title to the motor vehicle fuel.

(3) ''Distributor'' means any person who was required to be licensed as a distributor under Part 2 (commencing with Section 7301) as in effect on December 31, 2001.

7362. The tax specified in Section 7360 is imposed on the removal of motor vehicle fuel in this state from a terminal if the motor vehicle fuel is removed at the rack.

7363. The tax specified in Section 7360 is also imposed on all of the following:

(a) The removal of motor vehicle fuel in this state from any refinery if either of the following applies:

(1) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensed supplier.

(2) The removal is at the refinery rack.

(b) The entry of motor vehicle fuel into this state for sale, consumption, use, or warehousing if either of the following applies:

(1) The entry is by bulk transfer and the enterer is not a licensed supplier.

(2) The entry is not by bulk transfer.

(c) The removal or sale of motor vehicle fuel in this state to an unlicensed person unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel.

(d) The removal or sale of blended motor vehicle fuel in this state by the blender thereof. The number of gallons of blended motor vehicle fuel subject to tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel.

7364. The tax specified in Section 7360 is imposed as a backup tax on the delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle or sale of any of the following:

(a) Any motor vehicle fuel on which a claim for refund has been allowed.

(b) Any liquid on which tax has not been imposed by this part, Part 3 (commencing with Section 8601), or Part 31 (commencing with Section 60001).

7365. Any person that produces blended motor vehicle fuel outside the bulk transfer/terminal system (the blender) shall pay tax as provided in subdivision (d) of Section 7363.

7366. Every enterer shall pay tax on motor vehicle fuel imported into this state as provided in subdivision (b) of Section 7363.

7367. Every highway vehicle operator/fueler is liable for the backup tax imposed under Section 7364.

7368. Every position holder shall pay the tax on the removal of motor vehicle fuel from a terminal as provided in Section 7362.

7369. Every refiner shall pay tax on the removal of motor vehicle fuel from a refinery as provided in subdivision (a) of Section 7363.

7370. The terminal operator is jointly and severally liable for the tax imposed under Section 7362 if both of the following apply:

(a) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensed supplier.

(b) The terminal operator has not met the conditions of Section 7371.

7371. A terminal operator is not liable for tax under Section 7370, if at the time of the removal, all of the following apply:

(a) The terminal operator is a licensed supplier.

(b) The terminal operator has an unexpired notification certificate from the position holder as required by the Internal Revenue Service.

(c) The terminal operator has no reason to believe that any information in the certificate is false.

SEC. 5. Chapter 2.5 (commencing with Section 7370) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 6. Chapter 2.5 (commencing with Section 7385) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.5. AIRCRAFT JET FUEL TAX

Article 1. Definitions

7385. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this chapter.

7386. ''Aircraft'' means any powered contrivance designed for navigation in the air except a rocket or missile.

7387. ''Aircraft jet fuel'' means any inflammable liquid which is used or sold for use in propelling aircraft operated by the jet or turbine type of engine.

7388. ''Aircraft jet fuel dealer'' means any person who sells to an aircraft jet fuel user, aircraft jet fuel delivered in this state into the fuel tanks of aircraft or into a storage facility from which the fuel is withdrawn for use in aircraft.

7389. ''Aircraft jet fuel user'' means any person who uses aircraft jet fuel for the propulsion of an aircraft in this state except the following:

(a) A common carrier by air engaged in the business of transporting persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the authority of the laws of this state, of the United States, or of any foreign government.

(b) A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft, or modifying, overhauling, repairing, maintaining, or servicing of aircraft.

(c) The armed forces of the United States.

7390. ''Fuel tank'' means any receptacle on an aircraft from which fuel is supplied for the propulsion of the aircraft.

7391. ''Use'' means the placing of aircraft jet fuel into the fuel tank of an aircraft in this state.

Article 2. Imposition of Tax

7392. For the privilege of using or selling aircraft jet fuel a tax is imposed upon every aircraft jet fuel dealer at the rate of two cents ($0.02) for each gallon of that fuel sold to an aircraft jet fuel user or used by the dealer as an aircraft jet fuel user.

7393. The aircraft jet fuel dealer shall make a return of the tax due under Section 7392 as required of suppliers under Section 7651. All of the provisions of this part relating to the collection of the tax shall be applicable to the collection of the tax imposed by Section 7392.

7394. If a person certifies in writing to an aircraft jet fuel dealer that the sale or use of aircraft jet fuel purchased by him or her is not subject to the tax imposed by Section 7392 and the person uses the fuel as an aircraft jet fuel user, the person shall be liable for payment of the tax imposed by Section 7392 as if he or she were an aircraft jet fuel dealer making taxable sales of aircraft jet fuel at the time of that use and the number of gallons of fuel so used shall be deemed the number of gallons sold by him or her.

Article 3. Permit

7395. Every person desiring to become an aircraft jet fuel dealer shall first secure from the board an aircraft jet fuel dealer permit. Applications for permits shall be made to the board on forms prescribed by the board. Before issuing the permit the board may require the applicant to furnish the bond required under Chapter 4 (commencing with Section 7451).

7396. Upon receipt of the application and after the deposit of such bond as the board may require, the board shall issue to the applicant an aircraft jet fuel dealer permit authorizing the applicant to become a dealer in aircraft jet fuel. The permit is valid until canceled, suspended, or revoked.

Article 4. Administrative Provisions

7397. All of the administrative provisions of this part not inconsistent with this chapter shall be applicable to the administration of the tax imposed by Section 7392.

Article 5. Disposition of Proceeds

7398. All money received in payment of the tax imposed by this chapter shall be deposited in the State Treasury to the credit of the Motor Vehicle Fuel Account in the Transportation Tax Fund, and after the payment of any refunds authorized by this part, the balance remaining shall be transferred to the Aeronautics Account in the State Transportation Fund for allocation pursuant to Section 8352.3.

SEC. 7. Chapter 3 (commencing with Section 7401) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 8. Chapter 3 (commencing with Section 7401) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 3. EXEMPTIONS

7401. (a) The provisions of this part requiring the payment of motor vehicle fuel taxes do not apply to any of the following:

(1) Any entry or removal from a terminal or refinery of motor vehicle fuel transferred in bulk to a refinery or terminal if the persons involved (including the terminal operator) are licensed suppliers.

(2) The removal of motor vehicle fuel, if all of the following apply:

(A) The motor vehicle fuel is removed by railroad car from an approved refinery and is received at an approved terminal.

(B) The refinery and the terminal are operated by the same licensed supplier.

(C) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) Motor vehicle fuel which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside of this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier.

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agency, whether hired by the purchaser or not, for shipment to the out-of-state point.

(C) Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(4) Motor vehicle fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the motor vehicle fuel in a motor vehicle that is registered with the United States Department of State, and whose government has done either of the following:

(A) Entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes.

(B) Granted a similar exemption to representatives of the United States.

(5) Motor vehicle fuel sold to the United States armed forces for use in ships or aircraft, or for use outside this state.

(6) Gasoline blendstocks removed from a pipeline or vessel, when the gasoline blendstocks are received by a licensed industrial user.

(7) Any entry or removal from a terminal or refinery of gasoline blendstocks that are received at an approved terminal or refinery if the person otherwise liable for the tax is a licensed supplier.

(8) Any entry or removal from a terminal or refinery of gasoline blendstocks not in connection with a sale if the person otherwise liable for the tax is a licensed supplier and the person does not use the gasoline blendstocks to produce finished gasoline.

(9) Any entry or removal from a terminal or refinery of gasoline blendstocks in connection with a sale if the person otherwise liable for the tax is a licensed supplier and at the time of sale, such person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(10) If paragraph (8) or (9) applied to the removal or entry of gasoline blendstocks, any resale made of gasoline blendstocks, when the person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(11) Motor vehicle fuel sold by a supplier to a train operator for use in a motor vehicle fuel-powered train or for other off-highway use and the supplier has on hand an exemption certificate described in Section 7403 from the train operator.

(b) For purposes of this section:

(1) ''Carrier'' means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers.

(2) ''Forwarding agent'' means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

7402. (a) The certificate to be provided by a buyer of gasoline blendstocks consists of a statement that is signed under penalty of perjury by a person with authority to bind the buyer. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(1) The date one year after the effective date of the certificate.

(2) The date a new certificate is provided by the buyer to the seller.

(b) An exemption certificate for gasoline blendstocks that states that the blendstocks will not be used to produce finished gasoline shall contain that information and be in the form as the board may prescribe.

7403. (a) The certificate to be provided by a train operator consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer. A new certificate must be given if any

information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(b) An exemption certificate for motor vehicle fuel used in a motor vehicle fuel-powered train or for other off-highway use shall contain that information and be in the form as the board may prescribe.

7403.1. Prior to issuing an exemption certificate as provided in Section 7403, the train operator shall obtain a license from the board. Every application for a license shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

7403.2. (a) For the privilege of purchasing motor vehicle fuel exempt from taxes under paragraph (11) of subdivision (a) of Section 7401, each train operator must make a report to the board showing:

(1) The name and license number of the supplier from whom it purchased motor vehicle fuel and the number of gallons of motor vehicle fuel purchased that is exempt from the tax.

(2) Any other information required by the board.

(b) Each train operator shall prepare and file with the board on forms prescribed by the board a report showing the information in subdivision (a) during each quarterly reporting period. The report shall be filed with the board on or before the last day of the month following the close of the quarterly period to which it relates. To facilitate the administration of this part, the board may require the filing of these reports for other than quarterly periods.

(c) All of the administrative provisions of this part relating to a supplier shall be applicable to a train operator.

(d) The board may revoke the train operator's license provided for in Section 7403.1 due to the filing of inaccurate or improper reports.

7404. If a purchaser gives an exemption certificate for motor vehicle fuel pursuant to this chapter to the effect that the motor vehicle fuel purchased will be used in an exempt manner, and sells the motor vehicle fuel or uses the motor vehicle fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 7360) of this part as if the purchaser were a supplier of the motor vehicle fuel at the time of that sale or use.

7405. (a) Any person, including any officer or employee of a corporation, who gives an exemption certificate pursuant to this chapter

for motor vehicle fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, for the purpose of evading payment of the amount of the tax applicable to the transaction, is guilty of a misdemeanor punishable as provided in Section 8405.

(b) Any person, including any officer or employee of a corporation, who gives an exemption certificate for motor vehicle fuel pursuant to this chapter that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax and one thousand dollars ($1,000) for each certificate issued for personal gain or to evade the payment of taxes.

SEC. 9. Chapter 4 (commencing with Section 7451) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 10. Chapter 4 (commencing with Section 7451) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 4. LICENSES AND BONDS

Article 1. License for Supplier

7451. Every person before becoming a supplier shall apply to the board for a license authorizing the person to engage in business as a supplier on forms prescribed by the board. A supplier's license shall be issued only to a person who is a supplier of motor vehicle fuel as defined in Section 7338. It is unlawful for any person to be a supplier without first securing a license.

7452. Applications shall be made on forms to be prescribed, prepared, and furnished by the board.

7453. The license issued to any supplier is not transferable and is valid until canceled or revoked.

Article 2. License for Industrial User

7460. Every person before becoming an industrial user shall apply to the board for a license authorizing the person to operate as an industrial user on forms prescribed by the board. An industrial user license shall be issued only to a person who is an industrial user of motor vehicle fuel as defined in Section 7322. It is unlawful for a person to act as an industrial user without first securing a license.

Article 3. License for Pipeline Operator and Vessel Operator

7470. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. A pipeline operator license or a vessel operator license shall be issued only to a person who is a pipeline operator or a vessel operator as defined in Sections 7331 and 7344. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license.

Article 4. Bonds

7486. Before granting a license authorizing a person to engage in business as a supplier, the board may require the person to file with the board security, in the form as it prescribes. Any security in the form of cash or insured deposits in banks or savings and loan institutions or a bond or bonds duly executed by an admitted surety insurer, payable to the state shall be held by the board in trust to be used solely in the manner provided by this section conditioned upon faithful performance of all the requirements of this part. Security is expressly provided for the payment of all taxes, penalties, and other obligations of the person arising out of this part.

7487. Subject to the limitations provided in this section, the board shall fix the total amount of the security required of any supplier and may increase or reduce the amount at any time. The total amount of the security required of any supplier shall never be more than three times the estimated average monthly tax liability of the supplier but not in excess of one million dollars ($1,000,000).

Article 5. Denial of License

7491. The board may refuse to issue a license under this part:

(a) If the application therefor is filed by an applicant who formerly held any license under this part which, prior to the time of filing the application, has been revoked for cause by the board; or

(b) If the board determines that the application therefor is not filed in good faith or made by the real person in interest.

7492. Before the refusal, the board shall grant the applicant a hearing and shall give him or her at least 10 days' written notice of the time and place thereof.

7493. The notice shall be addressed to the applicant at his or her address as it appears in the records of the board, and shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 6. Revocation of License

7505. The board may revoke the license of any person who refuses or neglects to comply with any provisions of this part or any rule or regulation of the board prescribed and adopted under this part.

7506. The board may revoke any supplier's license held by a person who does not engage in, or who discontinues, the removal, entry, or sale of motor vehicle fuel, producing of blended motor vehicle fuel, owning or holding inventory position of motor vehicle fuel, or owning or operating a refinery or terminal as any of the following:

(a) A blender, as defined in Section 7308.

(b) An enterer, as defined in Section 7311.

(c) A position holder, as defined in Section 7332.

(d) A refiner, as defined in Section 7334.

(e) A terminal operator, as defined in Section 7340.

(f) A throughputter, as defined in Section 7341.

7507. Before revoking any license the board shall notify the licensee to show cause within 10 days after the notice is given, why his or her license should not be revoked. The notice shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

7508. The board may cancel any license issued under this part immediately upon surrender thereof but before revoking a license the board shall allow the person an opportunity to show cause as provided in Section 7507.

7509. Upon revocation or cancellation of the license of the person or upon his or her cessation of business, all motor vehicle fuel remaining in his or her possession or ownership shall be deemed removed, entered, sold, delivered, or used and subject to jeopardy determination as provided in Section 7698 if, in the judgment of the board, it is necessary to ensure payment of the tax with respect to the removal, entry, sale, delivery, or use of the motor vehicle fuel.

7510. Subsequent to the revocation of the license of a person, the board shall reinstate the permit when the person pays the amount of tax determined, together with interest and penalties, fully complies with this part, and pays a fee of fifty dollars ($50) to the board for reinstatement. The fee shall not be subject to refund except as provided in Section 8126.

7511. It is unlawful for any person to operate in this state after a license has been revoked.

Article 7. Licensing of Locations

7520. Every person required to be licensed by the board shall provide the board with the names and addresses of all agents operating

in this state, the location of all offices or other places of business in this state, and any other information as the board may require.

SEC. 11. Chapter 5 (commencing with Section 7651) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 12. Chapter 5 (commencing with Section 7651) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 5. DETERMINATIONS AND PAYMENTS

Article 1. Returns, Reports, and Payments

7651. Each supplier shall prepare and file with the board on forms prescribed by the board a return showing the total number of gallons of motor vehicle fuel removed, sold, or entered within this state during each calendar month, or that monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the month following the monthly period to which it relates, together with a remittance payable to the Controller for the amount of tax due for that period less whatever amounts may have been paid theretofore for the same period because of returns, prepayment forms, and payments made on a weekly basis. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods.

7652. (a) Each throughputter shall prepare and make a report showing the following:

(1) The name and license number of the operator of each terminal at which it holds an inventory position in motor vehicle fuel.

(2) Any other information required by the board.

(b) Each throughputter shall prepare and file with the board on forms prescribed by the board a report showing the information in subdivision (a) during each calendar month, or the monthly period ended during that calendar month as the board may authorize. The person shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods.

7652.5. (a) Each terminal operator shall prepare and file with the board on forms prescribed by the board a report showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, the following:

(1) The name and license number of each person that is a position holder at each terminal it operates;

(2) The amount of motor vehicle fuel received at each terminal it operates;

(3) The identity of each position holder with respect to the rack removals of motor vehicle fuel from each terminal it operates and the volume and dates of the removals;

(4) The amount of motor vehicle fuel stored at each terminal it operates;

(5) The destination (by state) of all motor vehicle fuel removed at a terminal rack of each terminal it operates, to the extent that information has been provided to the terminal operator; and

(6) Any other information required by the board for the proper administration of this part. The terminal operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods.

(b) Upon written approval of the board, a terminal operator may satisfy the requirements of subdivision (a) above by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the terminal operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a terminal operator to file reports as specified in subdivision (a).

7652.7. (a) Each pipeline operator and vessel operator shall prepare and file with the board on forms prescribed by the board a report showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(1) The amount of motor vehicle fuel delivered to each terminal or refinery.

(2) The location of the terminal or refinery where the motor vehicle fuel was delivered.

(3) The date of delivery.

(4) Any other information required by the board for the proper administration of this part.

The pipeline operator and vessel operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods.

(b) Upon written approval of the board, a pipeline operator and vessel operator may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the pipeline operator and vessel operator under Section 48.4101-2 of Title 26 of the Code of

Federal Regulations. The board may, in its sole discretion, rescind its approval and require a pipeline operator and vessel operator to file reports as specified in subdivision (a).

7653. Each person subject to the tax imposed under Section 7361, on or before February 28, 2002, shall prepare and file with the board, on forms prescribed by the board, a return showing the total number of gallons of motor vehicle fuel owned by the person on January 1, 2002, for which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, the amount of the tax imposed, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

7654. (a) Any person who fails to file an information report on or before the required filing date or to include all the information required to be shown on the information report shall pay a penalty of fifty dollars ($50) for each report.

(b) Any person who files an inaccurate or improper information report shall pay a penalty of fifty dollars ($50) for each report.

7655. Any person who fails to pay the amount of tax shown to be due by his or her return on or before the last day of the month following the monthly period to which it relates shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

7656. The board for good cause may extend for not to exceed one month the time for making any report or return or paying any tax required under this part. The extension may be granted at any time if a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension to the date of payment.

7657. If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7654, 7655, 7659.5, 7659.6, 7660, 7705, and 7713. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases his or her claim for relief.

7657.1. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

7658. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 7655, 7656, 7661, and 7706. Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

7658.1. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 7655 and 7661 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the person.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

7658.5. Every payment on a delinquent tax shall be applied as follows:

(a) First, to any interest due on the tax.

(b) Second, to any penalty imposed by this part.

(c) The balance, if any, to the tax itself.

Article 2. Prepayments

7659. The provisions of this article apply to suppliers required to file a supplier's return pursuant to Section 7651.

7659.1. Upon written notification by the board, any person whose estimated tax liability under this part averages nine hundred thousand dollars ($900,000) or more per month, as determined by the board, shall, without regard to the tax in any one month, make a prepayment as prescribed in this section. The prepayment requirement may be satisfied by making a prepayment of an amount not less than 95 percent of the tax liability for the month to which the prepayment applies or a prepayment not less than 95 percent of the amount of the tax liability reported for the previous month. Prepayments shall be made for the monthly periods designated by the board and during each succeeding monthly period until further notification by the board in writing.

7659.2. Each prepayment shall be accompanied by a report of the amount of that prepayment in a form prescribed by the board and shall be filed with the board on or before the 15th day following each monthly period together with a remittance payable to the Controller of the amount due.

7659.3. The amount of the prepayment shall constitute a credit against the amount of the taxes due and payable for the monthly period for which the prepayment was made and for each succeeding monthly prepayment or period until the credit is fully utilized.

7659.4. In determining whether a person's estimated tax liability averages nine hundred thousand dollars ($900,000) or more per month, the board may consider tax returns filed pursuant to this part as well as

any information in the board's possession or which may come into its possession.

7659.5. Any person required to make a prepayment pursuant to Section 7659.1 who fails to make a timely prepayment but makes that prepayment before the last day of the month following the monthly period for which the prepayment was due, shall also pay a penalty of 6 percent of the amount of prepayment.

7659.6. Any person required to make a prepayment pursuant to Section 7659.1 who fails to make a prepayment before the last day of the month following the monthly period for which the prepayment became due and who files a timely return and payment for the monthly period for which the prepayment became due shall pay a penalty of 6 percent of the amount equal to 95 percent of the tax liability for the monthly period for which the required prepayment was not made.

7659.7. (a) If the failure to make a prepayment as described in Section 7659.6 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent, instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 7655, 7660, 7662, 7672, 7673, and 7726.

7659.8. Notification by the board, provided for in Section 7659.1, may be served personally or by mail in the manner prescribed in Section 7671 for service of notice of a deficiency determination.

Article 3. Determination if No Return Made

7660. If any supplier fails, neglects, or refuses to file the return within the time prescribed by this chapter, the board shall estimate the motor vehicle fuel removals, entries or sales for the period for which he or she made no return within the time required. Upon the basis of this estimate the board shall determine the tax due from the supplier, and shall add to the tax a penalty of 10 percent thereof. The board may make a determination for more than one period and may make one or more determinations for the same period.

7661. All determinations so made, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7662. If the neglect or refusal of a supplier to file a return is due to fraud or intent to evade the tax, a penalty of 25 percent of the tax shall

be added thereto in addition to the 10 percent penalty provided in Section 7660.

7663. Promptly after making its determination the board shall give to the delinquent supplier written notice of the estimate, tax, and penalty, the notice shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 4. Deficiency Determinations

7670. If the board is not satisfied with the return made by any supplier, it may make a deficiency determination of the tax required to be paid by the supplier based upon information contained in the return or upon any information in the possession of the board. The board may make a determination for more than one period and may make one or more determinations for the same period. When a business is discontinued a determination may be made at any time thereafter, within the period specified in Section 7675, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

7671. The board shall give the supplier written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the supplier at the supplier's address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of that delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

7672. If any part of the deficiency for which a deficiency determination is made is due to neglect or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.

7673. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the tax, a penalty of 25 percent of the amount of the determination shall be added thereto.

7674. All deficiency determinations, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month

following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7675. Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be given to the supplier within three years after the last day of the month following the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of a failure to make a return the notice of determination shall be mailed within eight years after the date the return was due.

7675.1. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

7676. If, before the expiration of the time prescribed in Section 7675 for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Article 5. Jeopardy Determinations and Weekly Payments

7698. If the board believes that the collection of any amount of tax imposed under this part will be jeopardized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable.

7699. If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 10 days after service upon the supplier of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and interest provided in Article 6 (commencing with Section 7710) shall attach to the amount specified.

7700. The supplier against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 6 (commencing with Section 7710). He or she shall, however, file the petition for redetermination with the board within 10 days after the service upon him or her of notice of the determination. At the time of filing the petition for redetermination, the supplier shall deposit with the board such security as it may deem necessary to ensure compliance with this part.

7700.5. In accordance with these rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive.

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(c) To request the release of all or a part of the property to the person.

(d) To request a stay of collection activities. The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 7700, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 7699 relating to the finality date of the determination or to penalty or interest.

7701. If the board deems the procedure necessary in order to insure payment to the state of the amount of taxes due from any supplier under this part, it may require the supplier to make returns and payments of taxes on a weekly basis. The supplier must then file a return each Tuesday showing the total number of gallons of motor vehicle fuel removed, entered, or sold by the supplier during the week ending the Saturday next preceding, the amount of tax due for that week and such other information as the board deems necessary for the proper administration of this article. The return shall be accompanied by a remittance payable to the Controller for the amount of tax due for the period covered.

7702. A supplier required to make weekly payments is not relieved of the duty of filing the verified monthly return required by Article 1 (commencing with Section 7651).

7703. Whenever any supplier who is required to pay tax in weekly installments as provided by Section 7701 fails to make a weekly return or to pay the full amount in accordance with the terms and conditions prescribed by the board, the supplier's license may be revoked forthwith.

7704. If a supplier fails to make the supplier's weekly return or to pay any weekly installment of the tax, or any part thereof, pursuant to the requirement imposed upon the supplier under Section 7701, the full amount of the installment becomes immediately due and payable. The board shall thereupon make a jeopardy determination under Section 7698 and the Controller and the Attorney General shall forthwith collect the tax due from the supplier in the manner prescribed by Chapters 5 (commencing with Section 7651) and 6 (commencing with Section 7851). All provisions of those chapters, where relevant, apply to collections required to be made under this article.

7705. If any supplier fails to pay any weekly installment of tax shown to be due by the supplier's return on the Tuesday when required to be paid, a penalty of 5 percent shall be added thereto. In addition, if any weekly installment of tax remains unpaid on the last day of the month following the month during which the last of the removals, entries for sales occurred on which the weekly installment was levied, a penalty of 10 percent of the installment, exclusive of penalties, shall be added thereto.

The weekly installment shall be deemed not paid or unpaid on any particular day:

(a) If not paid prior to 5 p.m. of that day, when paid in person.

(b) If the envelope in which the remittance is enclosed bears a post office cancellation mark dated later than that day, when paid by mail.

7706. All jeopardy determinations including those made under Section 7704, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7707. Any notice required by this article shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 6. Redeterminations

7710. Any supplier against whom a determination is made by the board under Article 3 (commencing with Section 7660) and Article 4 (commencing with Section 7670) may petition for a redetermination within 30 days after the date the notice thereof is given to him. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

7710.5 Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to

the date on which the board issues its order or decision upon the petition for the redetermination.

7711. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the supplier has so requested in his or her petition shall grant him or her an oral hearing and shall give him or her 10 days notice of the time and place of the hearing. Service of notice shall be as prescribed by Section 7671. The board may continue the hearing from time to time as may be necessary.

7711.5. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 7662, Section 7673, or Section 7726 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the date the return for the period for which the increase is asserted was due.

7712. The order or decision of the board upon a petition for redetermination becomes final 30 days after the giving of notice thereof to the supplier as prescribed by Section 7671.

7713. All determinations made by the board under this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto. Payments shall be made in the form of a remittance payable to the Controller and shall be filed with the board together with a copy of the notice of determination which the board shall furnish to the supplier for that purpose.

7714. In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on the underpayments and overpayments shall be computed in the manner set forth in Sections 7674 and 8130.

7715. All payments received by the board from suppliers under this part shall be deposited by the board for the Controller in the State Treasury and appropriate advices of those payments shall be transmitted to the Controller by the board.

7716. The board shall notify the Controller of any and all determinations made pursuant to this chapter as well as the amounts self-determined under this part, and the Controller shall keep an appropriate record of all such matters.

Article 7. Payments by Unlicensed Persons

7726. (a) If any person becomes a supplier without first securing a license, the tax, applicable penalties and interest, if any, become immediately due and payable on account of all motor vehicle fuel removed, sold, or entered by the supplier.

(b) The board shall forthwith ascertain as best it may the amount of motor vehicle fuel removed, sold, or entered and shall determine immediately the tax on the amount, adding to the tax a penalty of 25 percent of the amount of the tax, and shall give the unlicensed supplier notice of this determination as prescribed by Section 7671; provided, however, that where the board determines that failure to secure a license was due to reasonable cause, the penalty may be waived. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the unlicensed supplier to petition for a redetermination.

7727. (a) Any person who becomes liable for the backup tax imposed under Section 7364 as a highway vehicle operator/fueler and uses untaxed motor vehicle fuel, causes to be delivered untaxed motor vehicle fuel into the fuel tank of a motor vehicle fuel-powered highway vehicle, or sells untaxed motor vehicle fuel, the tax, applicable penalties and interest, if any, become immediately due and payable on account of all motor vehicle fuel used, delivered, or sold.

(b) The board shall forthwith ascertain as best it may the amount of motor vehicle fuel used, delivered, or sold and shall determine immediately the tax on the amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars ($500), whichever is greater, and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 7671. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

(c) All administrative provisions contained in this part that apply to a supplier shall also be applicable to a highway vehicle operator/fueler.

7728. The board shall file a copy of this jeopardy determination with the Controller who shall forthwith collect the tax, penalty, and interest due from the unlicensed supplier by seizure and sale of property in the manner prescribed for the collection of a delinquent monthly tax.

7729. At the request of the Controller, the Attorney General shall commence and prosecute to final determination an action at law to collect the tax, penalty, and interest, or any part thereof, determined against an unlicensed supplier.

7730. In the suit, a copy of the jeopardy determination certified by the secretary of the board or by the Controller, shall be prima facie

evidence that the unlicensed supplier is indebted to the state in the amount of the tax, penalties, and interest computed as prescribed by Section 7706.

7731. The foregoing remedies of the state are cumulative.

7732. No action taken pursuant to this article relieves the unlicensed supplier or a highway vehicle operator/fueler in any manner from the penal provisions of this part.

SEC. 13. Section 7851 of the Revenue and Taxation Code is amended to read:

7851. If any supplier is delinquent in the payment of his or her tax, or in the event a determination has been made against him or her which remains unpaid, the Controller may, not later than 10 years after the payment became delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the supplier, or owing any debts to the supplier. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

SEC. 14. Section 7855 of the Revenue and Taxation Code, as amended by Chapter 609 of the Statutes of 1998, is amended to read:

7855. (a) The Controller may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or personal property belonging to a supplier or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the supplier or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term ''payments'' does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term ''payments'' does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the supplier or other person liable for the tax.

(3) Any other payments or credits due or becoming due the supplier or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 14.5. Section 7855 of the Revenue and Taxation Code, as amended by Chapter 991 of the Statutes of 1999, is amended to read:

7855. (a) The Controller may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or personal property belonging to a supplier or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the supplier or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term ''payments'' does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term ''payments'' does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the supplier or other person liable for the tax.

(3) Any other payments or credits due or becoming due the supplier or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 15. Section 7861 of the Revenue and Taxation Code is amended to read:

7861. The Controller may request the Attorney General to bring suit for the recovery of any unpaid tax, interest, penalties, and costs.

SEC. 16. Section 7863 of the Revenue and Taxation Code is amended to read:

7863. Payment of an amount to the board for and on account of the tax and the acceptance thereof does not bar an action by the state to recover any additional amount which is actually due.

SEC. 17. Section 7865 of the Revenue and Taxation Code is amended to read:

7865. In the action a certificate issued by the board showing unpaid taxes determined against any supplier shall be prima facie evidence of all of the following:

(a) The determination of the tax, the delinquency thereof, and the amount of the tax, interest, penalties, and costs due and unpaid to the state.

(b) The indebtedness of the supplier to the state in the amount of the tax, interest, and penalties therein appearing unpaid.

(c) The full compliance by all persons required to perform administrative duties under this part with all the forms of law in relation to the determination and levy of the tax.

SEC. 18. Section 7891 of the Revenue and Taxation Code is amended to read:

7891. Whenever any supplier is delinquent in the payment of the tax, the Controller or his or her authorized representative may forthwith collect the tax due in the following manner: The Controller shall seize any property, real or personal, of the supplier, and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any penalties, interest and any costs incurred on account of the seizure and sale.

SEC. 19. Section 7892 of the Revenue and Taxation Code is amended to read:

7892. Notice of the sale and the time and place thereof shall be given to the delinquent supplier and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the supplier or other person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount of the taxes, penalties, interest, and costs, the name of the supplier, and the further statement that unless the taxes, penalties, interest, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 20. Section 7893 of the Revenue and Taxation Code is amended to read:

7893. At the sale the Controller or his or her authorized agent shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any

real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the supplier.

SEC. 21. Section 7895 of the Revenue and Taxation Code is amended to read:

7895. If upon the sale the moneys received exceed the amount of all taxes, penalties, interest, and costs due the state from the supplier, the Controller shall return the excess to the supplier and obtain a receipt. If for any reason the receipt of the supplier is not available, the Controller shall deposit the excess moneys in an unclaimed property account, in trust for the supplier, subject to the order of the supplier, the supplier's heirs, successors, or assigns.

SEC. 22. Section 7931 of the Revenue and Taxation Code is amended to read:

7931. Whenever the state acquires any real or personal property seized and sold for delinquent taxes of the supplier, the Controller may, with the consent of the Department of General Services, sell the property or any part thereof at private sale or at public auction.

SEC. 23. Section 7934 of the Revenue and Taxation Code is amended to read:

7934. The Controller shall distribute the proceeds of the sale in the following order:

(a) The payment of all expenses of the sale.

(b) The payment of all amounts due from the supplier under this part.

(c) The remainder to the General Fund of the state.

SEC. 24. Section 7956 of the Revenue and Taxation Code is amended to read:

7956. Whenever a supplier ceases to engage in business as a supplier within the state by reason of the discontinuance, sale, or transfer of the business, the supplier shall give notice in writing thereof to the board on or before the date of the discontinuance, sale, or transfer.

SEC. 25. Section 7958 of the Revenue and Taxation Code is amended to read:

7958. All amounts under this part, not yet due and payable under other provisions hereof, become due and payable concurrently with the discontinuance, sale, or transfer. The supplier shall forthwith make a report and pay all of the amounts due and shall surrender the supplier's license to the board.

SEC. 26. Section 8101 of the Revenue and Taxation Code is amended to read:

8101. The following persons who have paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel,

shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

(b) Any person who exports the motor vehicle fuel for use outside of this state. Motor vehicle fuel carried from this state in the fuel tank of a motor vehicle or aircraft is not deemed to be exported from this state unless the motor vehicle fuel becomes subject to tax as an ''import'' under the laws of the destination state.

(c) Any person who sells the motor vehicle fuel to the armed forces of the United States for use in ships or aircraft or for use outside this state, under circumstances that would have entitled him or her to an exemption from the payment of the tax under Section 7401 had he or she been the supplier of this fuel.

(d) Any person who buys and uses the motor vehicle fuel in any construction equipment which is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(e) Any supplier who sells motor vehicle fuel which is sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (4) of subdivision (a) of Section 7401 if the supplier had sold the motor vehicle fuel directly to the consulate officer or consulate employee.

SEC. 27. Section 8103 of the Revenue and Taxation Code is amended to read:

8103. The Controller, upon the presentation of the properly completed claim and the invoice, shall cause to be paid to the claimant from the taxes collected under this part an amount equal to the taxes collected on the motor vehicle fuel in respect to which the refund is claimed. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

SEC. 28. Section 8106 of the Revenue and Taxation Code is amended to read:

8106. In lieu of the collection and refund of the tax on motor vehicle fuel used by a supplier in the manner as would entitle a purchaser to

claim refund under this article, credit may be given the supplier upon the supplier's tax return and the determination of the amount of tax.

SEC. 29. Section 8106.1 of the Revenue and Taxation Code is amended to read:

8106.1. In lieu of the collection and refund of the tax on motor vehicle fuel sold to a consulate officer or consulate employee of a foreign government by a licensed supplier who would be entitled to claim a refund under subdivision (e) of Section 8101, a credit may be given the supplier upon the supplier's tax return and the determination of the amount of tax shall be in accordance with any rules and regulations which the board may prescribe.

SEC. 30. Section 8106.5 of the Revenue and Taxation Code is amended to read:

8106.5. In lieu of the collection and refund of the tax on motor vehicle fuel exported by a licensed supplier for use outside the state in such a manner as would entitle a supplier to claim a refund under subdivision (b) of Section 8101, credit may be given the supplier upon the supplier's tax return and the determination of the amount of tax in accordance with such rules and regulations as the board may prescribe.

SEC. 31. Section 8106.7 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 8126 of the Revenue and Taxation Code is amended to read:

8126. If the board determines that any amount not required to be paid under this part has been paid by any person that is licensed as a supplier, the board shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected and certify the amount to the Controller for credit or refund. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 33. Section 8127.6 of the Revenue and Taxation Code is repealed.

SEC. 34. Section 8128 of the Revenue and Taxation Code is amended to read:

8128. (a) Except as provided in subdivision (b) no refund under this article shall be approved by the board after three years from the last day of the month following the month for which the overpayment was made, or with respect to determinations made under Article 3, 4, or 5 of Chapter 5 of this part, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the

expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 7676.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 7676 if a claim therefor is filed with the board before the expiration of the period agreed upon.

SEC. 35. Section 8130 of the Revenue and Taxation Code is amended to read:

8130. Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the month following the period during which the overpayment is made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 36. Section 8146 of the Revenue and Taxation Code is amended to read:

8146. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this part of any tax determined by the board.

SEC. 37. Section 8150 of the Revenue and Taxation Code is amended to read:

8150. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff under this part, Part 3 (commencing with Section 8601), and Part 31 (commencing with Section 60001), and the balance of the judgment shall be refunded to the plaintiff.

SEC. 38. Section 8152 of the Revenue and Taxation Code is amended to read:

8152. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any tax paid when the action is brought by or in the name of an assignee of the supplier paying the tax or by any person other than the person who paid the tax.

SEC. 39. Section 8253 of the Revenue and Taxation Code is amended to read:

8253. The board may make any examinations of the books and records of highway vehicle operators/fuelers, industrial users, pipeline operators, suppliers, train operators, or vessel operators, and any other investigations as it may deem necessary in carrying out the provisions of this part.

SEC. 40. Section 8263 of the Revenue and Taxation Code is amended to read:

8263. The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Motor Vehicle Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

SEC. 41. Section 8270 of the Revenue and Taxation Code is amended to read:

8270. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include motor vehicle fuel tax violations.

(e) For the purposes of this section:

(1) ''Investigation'' means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) ''Surveillance'' means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

SEC. 42. Chapter 9 (commencing with Section 8301) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 43. Chapter 9 (commencing with Section 8301) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 9. RECORDS

8301. Every highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, vessel operator and every person dealing in, removing, transporting, or storing motor vehicle fuel in this state shall keep those records, receipts, invoices, and other

pertinent papers with respect thereto in that form as the board may require. Failure to maintain records will constitute a misdemeanor punishable as provided in Section 8402.

8302. (a) Each terminal operator shall keep the following information with respect to each rack removal of motor vehicle fuel at each terminal it operates:

(1) The bill of lading or other shipping document.

(2) The volume and date of the removal.

(3) The identity of the person, such as a common carrier, that physically received the fuel.

(4) The identity of the position holder or position holder's customer.

(5) Any other information required by the Internal Revenue Service pursuant to Section 48.4101-1 of Title 26 of the Code of Federal Regulations.

(b) The terminal operator shall maintain the information described in this section at the terminal from which the removal occurred for at least three months after the removal to which it relates. Thereafter, the terminal operator shall retain the information at a location controlled by the terminal operator for at least four more years.

8303. All records required by this chapter shall be available at all times for the inspection of the board or its representatives.

8304. Upon demand of the board or its representatives a highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, and vessel operator shall furnish a statement under oath reflecting the contents of any records kept by the highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, and vessel operator with respect to the matters specified in this chapter.

SEC. 44. Section 8351 of the Revenue and Taxation Code is amended to read:

8351. The Controller shall transmit all money received by him or her in payment of taxes, interest, and penalties due under this part to the State Treasurer who shall deposit it in the State Treasury and credit it to the Motor Vehicle Fuel Fund, which is continued in existence as the Motor Vehicle Fuel Account in the Transportation Tax Fund, which fund is hereby created. All fees paid and accepted for issuance or reinstatement of licenses under this part shall be deposited by the board in the State Treasury to the credit of the same account.

Any reference in any law or regulation to the Motor Vehicle Fuel Fund shall be deemed to refer to the Motor Vehicle Fuel Account in the Transportation Tax Fund.

SEC. 45. Section 8352.1 of the Revenue and Taxation Code is amended to read:

8352.1. The money deposited to the credit of the Motor Vehicle Fuel Account may be expended for the following purposes:

(a) To pay the refunds authorized in this part, including refunds due on account of judgments for the return of taxes illegally collected.

(b) To the Controller, to carry out any duties imposed upon him or her by this part.

(c) To the board, to carry out any duties imposed upon it by this part.

(d) To pay the pro rata share of the overhead and general administrative expense of the Controller and the board attributable to duties imposed by this part. The pro rata share is payable upon presentation of a claim against any appropriation from the Motor Vehicle Fuel Account for the support of the Controller or the board, as the case may be.

SEC. 46. Section 8352.4 of the Revenue and Taxation Code is amended to read:

8352.4. Subject to Sections 8352 and 8352.1, there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund, for expenditure in accordance with Division 1 (commencing with Section 30) of the Harbors and Navigation Code, the sum of six million six hundred thousand dollars ($6,600,000) per annum, representing the amount of money in the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The actual amount shall be calculated using the annual reports of registered boats prepared by the Department of Motor Vehicles for the United States Coast Guard and the formula and method of the December 1972 report prepared for this purpose and submitted to the Legislature on December 26, 1972, by the Director of Transportation. If the amount transferred during each fiscal year is in excess of the calculated amount, the excess shall be retransferred from the Harbors and Watercraft Revolving Fund to the Motor Vehicle Fuel Account. If the amount transferred is less than the amount calculated, the difference shall be transferred from the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund. No adjustment shall be made if the computed difference is less than fifty thousand dollars ($50,000), and the amount shall be adjusted to reflect any temporary or permanent increase or decrease that may be made in the rate under the Motor Vehicle Fuel Tax Law. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

When deemed necessary by the Department of Transportation and the Department of Boating and Waterways, the Department of Transportation, after consultation with the Department of Boating and Waterways, shall prepare, or cause to be prepared, an updated report setting forth the current estimate of the amount of money credited to the

Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The Department of Transportation shall submit the report to the Legislature upon its completion.

SEC. 47. Chapter 11 (commencing with Section 8401) of Part 2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 48. Chapter 11 (commencing with Section 8401) is added to Part 2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 11. VIOLATIONS

8401. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, through false statement, trick or device, or otherwise, to do any of the following:

(a) Obtain motor vehicle fuel for export and fail to export it, or cause it not to be exported.

(b) Divert motor vehicle fuel, or cause it to be diverted, from interstate or foreign transit begun in this state.

(c) Return motor vehicle fuel to this state and sell or use it, or cause it to be used or sold in this state, without complying with the provisions of this part and without notifying the supplier from whom the motor vehicle fuel was originally purchased of his or her act.

It is unlawful for any supplier or other person to conspire with any person, firm, association, or corporation, or any officer or agent thereof, to withhold motor vehicle fuel from export, or to divert it from interstate or foreign transit begun in this state, or to return it to this state for sale or use so as to avoid any of the taxes imposed by this part.

Any person violating any provision of this section is guilty of a misdemeanor punishable as provided in Section 8402.

Each shipment illegally diverted or illegally returned constitutes a separate offense, and the unit of each shipment is the cargo of one vessel, or one railroad carload, or one automobile truck load, or such truck and trailer load, or one drum, or one barrel, or one case, or one can.

8402. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, to do any of the following:

(a) Fail to pay the tax.

(b) Fail, neglect, or refuse to make and file any statement required by this part in the manner or within the time required.

(c) Make any false statement or conceal any material fact in any record, report, affidavit, or claim provided for in this part.

(d) Violate any other provision of this part.

Any person violating any provision of this section is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than

one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment.

8403. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, to conduct any activities requiring a license under this part without a license or after a license has been surrendered, canceled, or revoked. Any violation of this section is subject to the same punishment as is prescribed in Section 8402.

8404. (a) Any person required to make, render, sign, or verify any return or report who makes any false or fraudulent return or report with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor punishable as provided in Section 8402.

(b) Any person who willfully aids or assists in, or procures, counsels, or advises in the preparation or presentation under, or in connection with any matter arising under this part, of a return, report, affidavit, claim, or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with knowledge or consent of the person authorized or required to present the return, report, affidavit, claim, or document is guilty of a misdemeanor punishable as provided in Section 8402.

8405. (a) Notwithstanding any other provision of this part, any person who willfully evades or attempts in any manner to evade or defeat the payment of the tax imposed by this part is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), imprisonment, or both the fine and imprisonment in the discretion of the court. In addition to the fine or imprisonment, or both, each person convicted under this section shall pay up to two dollars ($2) for each gallon of motor vehicle fuel, or portion thereof, knowingly removed, entered, blended, or possessed, kept, stored, or retained for the purpose of removal or removed, or offered for removal, or entry, or entered, or for sale, or actually sold, or offered for sale, in violation of this section, as determined by the court.

(b) Proceeds of the assessed penalty shall be distributed to the treasurer of the county in which the action was brought for allocation to the prosecuting agency in the amount necessary to reimburse the agency for its costs of prosecution, and to the county for its reasonable costs of administration of this paragraph. Any remaining proceeds shall be deposited in the Motor Vehicle Fuel Account in the Transportation Tax Fund, and shall be available, upon appropriation by the Legislature, to pay administrative costs of the board to enforce this part.

8406. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of

the offense, or within two years after the violation is discovered, whichever is later.

SEC. 49. Section 8502 of the Revenue and Taxation Code is amended to read:

8502. The commission may impose, in addition to any other tax authorized by this division, a tax on the privilege of selling within the region, motor vehicle fuel, as defined by Section 7326. The tax shall not apply to motor vehicle fuel used to power aircraft. The tax shall be levied at a rate established by the commission, but not exceeding ten cents ($0.10) per gallon. Commencing on January 1 of the year following the election approving the tax, the tax may be imposed for a period not to exceed 20 years.

SEC. 50. Section 60012 of the Revenue and Taxation Code is amended to read:

60012. ''Blender'' includes any person that produces or converts blended diesel fuel outside the bulk transfer/terminal system.

SEC. 51. Section 60023 of the Revenue and Taxation Code is amended to read:

60023. ''Blended diesel fuel'' means any mixture of diesel fuel with respect to which tax has been imposed and any other liquid (such as kerosene) on which tax has not been imposed (other than diesel fuel dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service rules). Blended diesel fuel also means any conversion of a liquid into diesel fuel. ''Conversion of a liquid into diesel fuel'' occurs when any liquid that is not included in the definition of diesel fuel and that is outside the bulk transfer/terminal system is sold as diesel fuel, delivered as diesel fuel, or represented to be diesel fuel.

SEC. 52. 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. 53. Unless otherwise provided, the provisions of this act shall become operative on January 1, 2002.

CHAPTER 1054

An act to amend Sections 128.5, 130, 149, 205, 5151, 5154, 5502, 5536, 5565, 5601, 5602, 5603, 5610, 5640, 5642, 5650, 5651, 5681,

5682, 5683, 8761, and 8771 of, to amend and repeal Section 5620 of, to add Sections 5110, 5111, 5112, and 5113 to, and to repeal Section 5643 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 128.5 of the Business and Professions Code is amended to read:

128.5. (a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Architects Board, the Board of Behavioral Science Examiners, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, or the Bureau of Security and Investigative Services has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

SEC. 2. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

(1) Medical Board of California.

(2) California Board of Podiatric Medicine.

(3) Physical Therapy Board.

(4) Board of Registered Nursing.

(5) Board of Vocational Nursing and Psychiatric Technicians.
(6) State Board of Optometry.
(7) California State Board of Pharmacy.
(8) Veterinary Medical Board.
(9) California Architects Board.
(10) Landscape Architect Technical Committee.
(11) Board for Professional Engineers and Land Surveyors.
(12) Contractors' State License Board.
(13) State Board of Guide Dogs for the Blind.
(14) Board of Behavioral Sciences.
(15) Structural Pest Control Board.
(16) Bureau of Electronic and Appliance Repair.
(17) Court Reporters Board of California.
(18) State Board for Geologists and Geophysicists.
(19) State Athletic Commission.
(20) Osteopathic Medical Board of California.
(21) The Respiratory Care Board of California.
(22) The Acupuncture Board.
(23) The Board of Psychology.

SEC. 3. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The Barbering and Cosmetology Program.
(2) The Funeral Directors and Embalmers Program.
(3) The Veterinary Medical Board.
(4) The Hearing Aid Dispensers Advisory Commission.
(5) The Landscape Architects Technical Committee.
(6) The California Board of Podiatric Medicine.
(7) The Respiratory Care Board of California.
(8) The Bureau of Home Furnishings and Thermal Insulation.
(9) The Bureau of Security and Investigative Services.
(10) The Bureau of Electronic and Appliance Repair.
(11) The Bureau of Automotive Repair.
(12) The California Architects Board.
(13) The Speech-Language Pathology and Audiology Board.
(14) The Board for Professional Engineers and Land Surveyors.
(15) The Board of Behavioral Sciences.
(16) The State Board for Geologists and Geophysicists.
(17) The Structural Pest Control Board.
(18) The Acupuncture Board.
(19) The Board of Psychology.
(20) The California Board of Accountancy.

SEC. 3.5. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The Bureau of Barbering and Cosmetology.
(2) The Cemetery and Funeral Bureau.
(3) The Veterinary Medical Board.
(4) The Hearing Aid Dispensers Advisory Commission.
(5) The Landscape Architects Technical Committee.
(6) The California Board of Podiatric Medicine.
(7) The Respiratory Care Board of California.
(8) The Bureau of Home Furnishings and Thermal Insulation.
(9) The Bureau of Security and Investigative Services.
(10) The Bureau of Electronic and Appliance Repair.
(11) The Bureau of Automotive Repair.
(12) The California Architects Board.
(13) The Speech-Language Pathology and Audiology Board.
(14) The Board for Professional Engineers and Land Surveyors.
(15) The Board of Behavioral Sciences.
(16) The State Board for Geologists and Geophysicists.
(17) The Structural Pest Control Board.
(18) The Acupuncture Board.
(19) The Board of Psychology.
(20) The California Board of Accountancy.

SEC. 4. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

(1) Accountancy Fund.
(2) California Board of Architectural Examiners Fund.
(3) Athletic Commission Fund.
(4) Bureau of Barbering and Cosmetology Contingent Fund.
(5) Cemetery Fund.
(6) Contractors' License Fund.

(7) State Dentistry Fund.
(8) State Funeral Directors and Embalmers Fund.
(9) Guide Dogs for the Blind Fund.
(10) Bureau of Home Furnishings and Thermal Insulation Fund.
(11) California Board of Architectural Examiners-Landscape Architects Fund.
(12) Contingent Fund of the Medical Board of California.
(13) Optometry Fund.
(14) Pharmacy Board Contingent Fund.
(15) Physical Therapy Fund.
(16) Private Investigator Fund.
(17) Professional Engineers' and Land Surveyors' Fund.
(18) Consumer Affairs Fund.
(19) Behavioral Sciences Fund.
(20) Licensed Midwifery Fund.
(21) Court Reporters' Fund.
(22) Structural Pest Control Fund.
(23) Veterinary Medical Board Contingent Fund.
(24) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
(25) State Dental Auxiliary Fund.
(26) Electronic and Appliance Repair Fund.
(27) Geology and Geophysics Fund.
(28) Dispensing Opticians Fund.
(29) Acupuncture Fund.
(30) Hearing Aid Dispensers Fund.
(31) Physician Assistant Fund.
(32) Board of Podiatric Medicine Fund.
(33) Psychology Fund.
(34) Respiratory Care Fund.
(35) Speech-Language Pathology and Audiology Fund.
(36) Board of Registered Nursing Fund.
(37) Nursing Home Administrator's State License Examining Board Fund.
(38) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
(39) Animal Health Technician Examining Committee Fund.
(40) Structural Pest Control Education and Enforcement Fund.
(41) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account

or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

SEC. 4.5. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

(1) Accountancy Fund.
(2) California Board of Architectural Examiners' Fund.
(3) Athletic Commission Fund.
(4) Barbering and Cosmetology Contingent Fund.
(5) Cemetery Fund.
(6) Contractors' License Fund.
(7) State Dentistry Fund.
(8) State Funeral Directors and Embalmers Fund.
(9) Guide Dogs for the Blind Fund.
(10) Bureau of Home Furnishings and Thermal Insulation Fund.
(11) California Board of Architectural Examiners-Landscape Architects Fund.
(12) Contingent Fund of the Medical Board of California.
(13) Optometry Fund.
(14) Pharmacy Board Contingent Fund.
(15) Physical Therapy Fund.
(16) Private Investigator Fund.
(17) Professional Engineers' and Land Surveyors' Fund.
(18) Consumer Affairs Fund.
(19) Behavioral Sciences Fund.
(20) Licensed Midwifery Fund.
(21) Court Reporters' Fund.
(22) Structural Pest Control Fund.
(23) Veterinary Medical Board Contingent Fund.
(24) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
(25) State Dental Auxiliary Fund.
(26) Electronic and Appliance Repair Fund.
(27) Geology and Geophysics Fund.
(28) Dispensing Opticians Fund.
(29) Acupuncture Fund.
(30) Hearing Aid Dispensers Fund.
(31) Physician Assistant Fund.
(32) Board of Podiatric Medicine Fund.
(33) Psychology Fund.
(34) Respiratory Care Fund.
(35) Speech-Language Pathology and Audiology Fund.
(36) Board of Registered Nursing Fund.

(37) Nursing Home Administrator's State License Examining Board Fund.

(38) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.

(39) Animal Health Technician Examining Committee Fund.

(40) Structural Pest Control Education and Enforcement Fund.

(41) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

SEC. 5. Section 5110 is added to the Business and Professions Code, to read:

5110. (a) After notice and an opportunity for a hearing, the board may deny an application to take the licensing examination, deny admission to current and future licensing examinations, void examination grades, and deny an application for a license or registration to any individual who has committed any of the following acts:

(1) Made any false, fraudulent, or materially misleading statement or a material omission in any application for a license, examination, or registration.

(2) Cheated or subverted or attempted to subvert any licensing examination.

(3) Aided, abetted, or conspired with any other person to violate paragraph (1) or (2).

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 5100.

(5) Any act committed outside of this state that would be a violation of this article if committed within this state.

(b) Neither the withdrawal of an application for examination, licensure, or registration, nor the expulsion or voluntary departure from an examination shall deprive the board of its authority to deny an application for, or admittance to, current or future licensing examinations, or to commence or continue a proceeding based on a violation of this article.

(c) Nothing in this article shall be construed to limit the authority of the board to refuse admittance to or to remove from the licensing examination, any person suspected of cheating or failing to comply with examination procedures or requirements.

(d) The term ''licensing examination'' includes the Uniform Certified Public Accountant examination, ethics examination, and any other professional or vocational licensing examination offered or administered by, or through, the board or other agencies within or outside of this state, for professional or vocational licensing purposes.

(e) The board may take any of the actions described in subdivision (a) based upon any determination, decision, ruling, or finding made by any state or other governmental entity, foreign or domestic, that any individual has committed any of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The provisions of this section are in addition to any other remedies that may be available under other provisions of law including, but not limited to, those set forth in Sections 123, 480, and 496.

SEC. 6. Section 5111 is added to the Business and Professions Code, to read:

5111. Cheating on, or subverting or attempting to subvert any licensing examination includes, but is not limited to, engaging in, soliciting, or procuring any of the following:

(a) Any communication between one or more examinees and any person, other than a proctor or exam official, while the examination is in progress.

(b) Any communication between one or more examinees and any other person at any time concerning the content of the examination including, but not limited to, any exam question or answer, unless the examination has been publicly released by the examining authority or jurisdiction.

(c) The taking of all or a part of the examination by a person other than the applicant.

(d) Possession or use at any time during the examination or while the examinee is on the examination premises of any device, material, or document that is not expressly authorized for use by examinees during the examination including, but not limited to, notes, crib sheets, text books, and electronic devices.

(e) Failure to follow any exam instruction or rule related to exam security.

(f) Providing false, fraudulent, or materially misleading information concerning education, experience, or other qualifications as part of, or in support of, any application for admission to any professional or vocational examination.

SEC. 7. Section 5112 is added to the Business and Professions Code, to read:

5112. (a) The board may deny an application to take the licensing examination, deny admittance to current and future licensing

examinations, and void examination grades on the grounds set forth in Section 5110 using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) The action the board has taken.

(B) The reasons the action was taken.

(C) The earliest date on which the individual may reapply for admittance to the licensing examination.

(D) The individual's right to a hearing under the provisions of Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code if a written request for a hearing is made within 60 days from the date of the board's notice. If the individual does not request a hearing, the board's action shall become final at the expiration of this 60-day period.

(2) Filing and serving a statement of issues in accordance with Section 11504 of the Government Code.

(b) The board shall issue the notice of action under paragraph (1) of subdivision (a) or file and serve the statement of issues under paragraph (2) of subdivision (a) within five years of the last day of the examination with respect to which the alleged prohibited act was committed or within three years of the discovery of the commission of the alleged prohibited act, whichever occurs later.

SEC. 8. Section 5113 is added to the Business and Professions Code, to read:

5113. An individual who has been denied admission to the licensing examination under Section 5110 may petition the board for admission to the Certified Public Accountant examination not less than one year after the effective date of the decision issued by the board following a hearing held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code or, if there was no hearing, may petition the board not less than one year after the decision or action pursuant to the notice of action issued by the board becomes final as provided in subparagraph (D) of paragraph (1) of subdivision (a) of Section 5112, unless the decision or notice of action issued by the board specifies a different timeframe within which this petition may be filed. However, in no event shall the timeframe specified by the board be more than three years from the effective date of the board's decision or from the date that the board's action pursuant to the notice of action becomes final.

SEC. 9. Section 5151 of the Business and Professions Code is amended to read:

5151. An applicant for registration as an accountancy corporation shall supply to the board all necessary and pertinent documents and information requested by the board concerning the applicant's plan of operation. The board may provide forms of application. If the board

finds that the corporation is duly organized and existing under the General Corporation Law or the foreign corporation is duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, that, except as otherwise permitted under Section 5053 or 5079, each officer, director, shareholder, or employee who will render professional services is a licensed person as defined in the Moscone-Knox Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the board, the board shall upon payment of the registration fee in the amount as it may determine, issue a certificate of registration. The applicant shall include with the application for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of accounting, which shall verify the shareholder's admission to practice in the foreign country, the date thereof, and the fact that the shareholder is currently in good standing as the equivalent of a certified public accountant or public accountant. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation.

SEC. 10. Section 5154 of the Business and Professions Code is amended to read:

5154. Except as provided in Section 5079 of this code and in Section 13403 of the Corporations Code, each director, shareholder, and officer of an accountancy corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices.

SEC. 11. Section 5502 of the Business and Professions Code is amended to read:

5502. As used in this chapter, board refers to the California Architects Board.

SEC. 12. Section 5536 of the Business and Professions Code is amended to read:

5536. (a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect,, to use

the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign or card or other device that might indicate to the public that he or she is an architect, that he or she is qualified to engage in the practice of architecture, or that he or she is an architectural designer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person who is not licensed to practice architecture under this chapter to affix a stamp or seal that bears the legend ''State of California'' or words or symbols that represent or imply that the person is so licensed by the state to plans, specifications, or instruments of service.

(c) It is a misdemeanor, punishable as specified in subdivision (a), for any person to advertise or represent that he or she is a ''registered building designer'' or is registered or otherwise licensed by the state as a building designer.

SEC. 13. Section 5565 of the Business and Professions Code is amended to read:

5565. The decision may:

(a) Provide for the immediate complete suspension by the holder of the license of all operations as an architect during the period fixed by the decision.

(b) Permit the holder of the license to complete any or all contracts for the performance of architectural services shown by evidence taken at the hearing to be then unfinished.

(c) Impose upon the holder of the license compliance with any specific conditions as may be just in connection with his or her operations as an architect disclosed at the hearing, and may further provide that until those conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the board.

(d) Assess a fine not in excess of five thousand dollars ($5,000) against the holder of a license for any of the causes specified in Section 5577. A fine may be assessed in lieu of, or in addition to, a suspension or revocation. All fines collected pursuant to this subdivision shall be deposited to the credit of the California Architects Board Fund.

SEC. 14. Section 5601 of the Business and Professions Code is amended to read:

5601. Within 10 days after the beginning of every month, all fees collected by the department for the month preceding, under the provisions of this chapter, shall be paid into the State Treasury to the credit of the California Architects Board Fund.

SEC. 15. Section 5602 of the Business and Professions Code is amended to read:

5602. The money paid into the California Architects Board Fund, which is hereby continued in existence, shall be used in the manner

prescribed by law to defray the expenses of the board in carrying out and enforcing the provisions of this chapter.

SEC. 16. Section 5603 of the Business and Professions Code is amended to read:

5603. The board shall make available to local building departments, and others upon request, an official roster listing the name, license number, and address of all its licensees issued licenses pursuant to this chapter and who are in good standing. The roster shall be open to inspection by the public during office hours of the board. Except for local building departments, the board may charge a fee for the maintenance, publication, and distribution of the roster, not to exceed the actual cost. All fees collected pursuant to this section shall be deposited in the California Architects Board Fund.

SEC. 17. Section 5610 of the Business and Professions Code is amended to read:

5610. A professional architectural corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed architects, are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations pertaining to the corporation and the conduct of its affairs. With respect to an architectural corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the California Architects Board.

SEC. 18. Section 5620 of the Business and Professions Code is amended to read:

5620. The duties, powers, purposes, responsibilities, and jurisdiction of the California State Board of Landscape Architects that were succeeded to and vested with the Department of Consumer Affairs in accordance with Chapter 908 of the Statutes of 1994 are hereby transferred to the California Architects Board. The Legislature finds that the purpose for the transfer of power is to promote and enhance the efficiency of state government and that assumption of the powers and duties by the California Architects Board shall not be viewed or construed as a precedent for the establishment of state regulation over a profession or vocation that was not previously regulated by a board, as defined in Section 477.

(a) There is in the Department of Consumer Affairs a California Architects Board as defined in Article 2 (commencing with Section 5510) of Chapter 3.

Whenever in this chapter ‘‘board’’ is used it refers to the California Architects Board.

(b) Except as provided herein, the board may delegate its authority under this chapter to the Landscape Architect Technical Committee.

(c) After review of proposed regulations, the board may direct the examining committee to notice and conduct hearings to adopt, amend, or repeal regulations pursuant to Section 5630, provided that the board itself shall take final action to adopt, amend, or repeal those regulations.

(d) The board shall not delegate its authority to discipline a landscape architect or to take action against a person who has violated this chapter.

(e) This section shall become inoperative on July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 19. Section 5640 of the Business and Professions Code is amended to read:

5640. It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment, for any person, who, without possessing a valid, unrevoked license as provided in this chapter, engages in the practice of landscape architecture or uses the title or term ''Landscape Architect'' in any sign, card, listing, advertisement, or in any other manner that would imply or indicate that he or she is a landscape architect as defined in Section 5615.

SEC. 20. Section 5642 of the Business and Professions Code is amended to read:

5642. This chapter shall not be deemed to prevent a landscape architect from forming a partnership, firm, or corporation with, or employing, persons who are not landscape architects if the signature, date, and license number of the landscape architect appears on all instruments of service. In no case shall the other members of the partnership, firm, or corporation be designated or described as landscape architects.

The name of the licensed landscape architect shall appear wherever the firm name is used in the professional practice of the partnership, firm, or corporation, and the landscape architect shall reside in California when the partnership, firm, or corporation maintains a California office or mailing address. The name of the licensee shall appear on all partnership, firm, or corporation stationery, brochures, business cards and any instruments of service used or provided in the professional practice of the partnership, firm, or corporation.

No partnership, firm, or corporation shall engage in the practice of landscape architecture unless the work is under the immediate and responsible direction of a licensee of the board.

Failure of any person to comply with this section constitutes a ground for disciplinary action.

SEC. 21. Section 5643 of the Business and Professions Code is repealed.

SEC. 22. Section 5650 of the Business and Professions Code is amended to read:

5650. Subject to the rules and regulations governing examinations, any person, over the age of 18 years, who has had six years of training and educational experience in actual practice of landscape architectural work shall be entitled to an examination for a license to practice landscape architecture. A degree from a school of landscape architecture approved by the board shall be deemed equivalent to four years of training and educational experience in the actual practice of landscape architecture. Before taking the examination, a person shall file an application therefor with the executive officer and pay the application fee fixed by this chapter.

SEC. 23. Section 5651 of the Business and Professions Code is amended to read:

5651. (a) The board shall by means of examination, ascertain the professional qualifications of all applicants for licenses to practice landscape architecture in this state and shall issue a license to every person whom it finds to be qualified on payment of the initial license fee prescribed by this chapter.

(b) The examination shall consist of a written examination. The written examination may be waived by the board if the applicant (1) has passed a written examination equivalent to that which was required in California at that time or is certified by the Council of Landscape Architects Registration Boards and has submitted proof of job experience equivalent to that which is required of California candidates and (2) has passed the California supplemental examination if, at the time of application, it is required of all California applicants.

SEC. 24. Section 5681 of the Business and Professions Code is amended to read:

5681. The fees prescribed by this chapter for landscape architect applicants and landscape architect licensees shall be fixed by the board as follows:

(a) The application fee for reviewing an applicant's eligibility to take any section of the examination may not exceed one hundred dollars ($100).

(b) The fee for any section of the examination administered by the board shall not exceed the actual cost to the board for purchasing and administering each exam.

(c) The fee for an original license may not exceed four hundred dollars ($400), except that, if the license is issued less than one year

before the date on which it will expire, then the fee shall equal 50 percent of the fee fixed by the board for an original license. The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

(d) The fee for a duplicate license may not exceed fifty dollars ($50).

(e) The renewal fee may not exceed four hundred dollars ($400).

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

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

(h) The fee for filing an application for approval of a school pursuant to Section 5650 may not exceed six hundred dollars ($600) charged and collected on an biennial basis.

SEC. 25. Section 5682 of the Business and Professions Code is amended to read:

5682. Within 10 days after the beginning of every month, all fees collected by the department for the month preceding, under the provisions of this chapter, shall be paid into the State Treasury to the credit of the California Architects Board-Landscape Architects Fund, which is hereby created.

SEC. 26. Section 5683 of the Business and Professions Code is amended to read:

5683. The money paid into the California Architects Board-Landscape Architects Fund is continuously appropriated to the board for expenditure in the manner prescribed by law to defray the expenses of the board and in carrying out and enforcing the provisions of this chapter.

SEC. 27. Section 8761 of the Business and Professions Code is amended to read:

8761. Any licensed land surveyor or registered civil engineer may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice. All maps, plats, reports, descriptions, or other documents issued by the licensed land surveyor or registered civil engineer shall be signed by the surveyor or engineer to indicate the surveyor's or engineer's responsibility for them. In addition to the signature, the map, plat, report, description, or other document shall bear the seal or stamp of the licensee or registrant and the expiration date of the license or registration. If the map, plat, report, description, or other document has multiple pages or sheets, the signature, seal or stamp, and expiration date of the license or registration

need only appear on the originals of the map or plat and on the title sheet of the report, description, or other document.

It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other document unless the person is authorized to practice land surveying.

It is unlawful for any person to stamp or seal any map, plat, report, description, or other document with the seal after the certificate of the licensee that is named on the seal has expired or has been suspended or revoked, unless the certificate has been renewed or reissued.

SEC. 28. Section 8771 of the Business and Professions Code is amended to read:

8771. (a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed, to assure, together with monuments already existing, the perpetuation or facile reestablishment of any point or line of the survey.

(b) When monuments exist that control the location of subdivisions, tracts, boundaries, roads, streets, or highways, or provide survey control, the monuments shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer prior to the time when any streets, highways, other rights-of-way, or easements are improved, constructed, reconstructed, maintained, resurfaced, or relocated, and a corner record or record of survey of the references shall be filed with the county surveyor. They shall be reset in the surface of the new construction, a suitable monument box placed thereon, or permanent witness monuments set to perpetuate their location if any monument could be destroyed, damaged, covered, or otherwise obliterated, and a corner record or record of survey filed with the county surveyor prior to the recording of a certificate of completion for the project. Sufficient controlling monuments shall be retained or replaced in their original positions to enable property, right-of-way and easement lines, property corners, and subdivision and tract boundaries to be reestablished without devious surveys necessarily originating on monuments differing from those that currently control the area. It shall be the responsibility of the governmental agency or others performing construction work to provide for the monumentation required by this section. It shall be the duty of every land surveyor or civil engineer to cooperate with the governmental agency in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, streets or right-of-way or easement lines shall not be deemed adequate for this purpose unless specifically noted on the corner record or record of survey of the improvement works with direct ties in bearing or azimuth and distance between these and other monuments of record.

(c) The decision to file either the required corner record or a record of survey pursuant to subdivision (b) shall be at the election of the licensed land surveyor or registered civil engineer submitting the document.

SEC. 29. Section 3.5 of this bill incorporates amendments to Section 149 of the Business and Professions Code proposed by both this bill and AB 2889. 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 149 of the Business and Professions Code, and (3) this bill is enacted after AB 2889, in which case Section 3 of this bill shall not become operative.

SEC. 30. Section 4.5 shall become operative only if AB 2888 of the 1999–2000 Regular Session is enacted and becomes operative on or before January 1, 2001, in which case Section 4 shall not become operative.

CHAPTER 1055

An act to amend Sections 120, 149, 5018, 5150, 19870, 19880, and 22258 of the Business and Professions Code, to amend Section 1365 of the Civil Code, to amend Section 14202 of the Corporations Code, to amend Sections 14504.2, 14505, 33420, 41020, 41020.5, and 84040 of the Education Code, to amend Section 22056 of the Financial Code, to amend Sections 705, 58937, 59947, 64309, 64696, 76906, and 78558 of the Food and Agricultural Code, to amend Sections 7504, 7591, 8899.10, 8899.12, 8899.16, 8899.21, 11126, 14998.4, 15311, 15363.6, 26509, 26915, 26945, 27000.7, 53131, and 68112 of, and to amend the heading of Chapter 1 (commencing with Section 15310) of Part 6.7 of Division 3 of Title 2 of, the Government Code, to amend Sections 11998.1, 33492.71, 34053, 34327.6, 41503.6, 41865, 50887.5, and 124850 of the Health and Safety Code, and to amend Sections 10821.5 and 12389 of the Insurance Code, to amend Sections 25696, 31306, 42021, and 42022 of the Public Resources Code, and to amend Sections 10525, 12112, 12151, 15076, 15076.5, and 15077 of the Unemployment Insurance Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 120 of the Business and Professions Code is amended to read:

120. (a) Subdivision (a) of Section 119 shall not apply to a surviving spouse having in his or her possession or displaying a deceased spouse's canceled certified public accountant certificate or canceled public accountant certificate that has been canceled by official action of the California Board of Accountancy.

(b) Notwithstanding Section 119, any person who has received a certificate of certified public accountant or a certificate of public accountant from the board may possess and may display the certificate received unless the person's certificate, permit, or registration has been suspended or revoked.

SEC. 2. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The State Board of Barbering and Cosmetology.

(2) The Funeral Directors and Embalmers Program.

(3) The Veterinary Medical Board.

(4) The Hearing Aid Dispensers Advisory Commission.

(5) The State Board of Landscape Architects.

(6) The California Board of Podiatric Medicine.

(7) The Respiratory Care Board of California.

(8) The Bureau of Home Furnishings and Thermal Insulation.

(9) The Bureau of Security and Investigative Services.

(10) The Bureau of Electronic and Appliance Repair.

(11) The Bureau of Automotive Repair.

(12) The Tax Preparers Program.

(13) The California Board of Architectural Examiners.

(14) The Speech-Language Pathology and Audiology Board.

(15) The Board for Professional Engineers and Land Surveyors.

(16) The Board of Behavioral Sciences.

(17) The State Board of Registration for Geologists and Geophysicists.

(18) The Structural Pest Control Board.

(19) The Acupuncture Board.

(20) The Board of Psychology.

(21) The California Board of Accountancy.

SEC. 2.5. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities

Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The Bureau of Barbering and Cosmetology.
(2) The Funeral Directors and Embalmers Program.
(3) The Veterinary Medical Board.
(4) The Hearing Aid Dispensers Advisory Commission.
(5) The Landscape Architects Technical Committee.
(6) The California Board of Podiatric Medicine.
(7) The Respiratory Care Board of California.
(8) The Bureau of Home Furnishings and Thermal Insulation.
(9) The Bureau of Security and Investigative Services.
(10) The Bureau of Electronic and Appliance Repair.
(11) The Bureau of Automotive Repair.
(12) The Tax Preparers Program.
(13) The California Architects Board.
(14) The Speech-Language Pathology and Audiology Board.
(15) The Board for Professional Engineers and Land Surveyors.
(16) The Board of Behavioral Sciences.
(17) The State Board for Geologists and Geophysicists.
(18) The Structural Pest Control Board.
(19) The Acupuncture Board.
(20) The Board of Psychology.
(21) The California Board of Accountancy.

SEC. 3. Section 5018 of the Business and Professions Code is amended to read:

5018. The board may by regulation, prescribe, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession. In addition to the requirements contained in Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code, a copy of the rules shall be mailed to every holder of a license under this chapter at least 30 days prior to a date named for a public hearing held for the purpose of receiving and considering objections to any of the proposed provisions. Every licensee of the California Board

of Accountancy in this state shall be governed and controlled by the rules and standards adopted by the board.

SEC. 4. Section 5150 of the Business and Professions Code is amended to read:

5150. An accountancy corporation is a corporation which is registered with the California Board of Accountancy and has a currently effective certificate of registration from the board pursuant to the Moscone-Knox Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code, and this article. Subject to all applicable statutes, rules and regulations, an accountancy corporation is entitled to practice accountancy. With respect to an accountancy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the California Board of Accountancy.

SEC. 5. Section 19870 of the Business and Professions Code is amended to read:

19870. In addition to the requirements of Section 19841, in order to be eligible to receive a gambling license as the owner of a gambling enterprise, a corporation shall comply with all of the following requirements:

(a) Maintain an office of the corporation in the gambling establishment.

(b) Comply with all of the requirements of the laws of this state pertaining to corporations.

(c) Maintain, in the corporation's principal office in California or in the gambling establishment, a ledger that meets both of the following conditions:

(1) At all times reflects the ownership of record of every class of security issued by the corporation.

(2) Is available for inspection by the division at all reasonable times without notice.

(d) Register as a corporation with the division and supply the following supplemental information to the division:

(1) The organization, financial structure, and nature of the business to be operated, including the names, personal and criminal history, and fingerprints of all officers, directors, and key employees, and the names, addresses, and number of shares held by all stockholders of record.

(2) The rights and privileges acquired by the holders of different classes of authorized securities, including debentures.

(3) The terms on which securities are to be offered.

(4) The terms and conditions on all outstanding loans, mortgages, trust deeds, pledges, or any other indebtedness or security device.

(5) The extent of the equity security holdings in the corporation of all officers, directors, and underwriters, and their remuneration as

compensation for services, in the form of salary, wages, fees, or otherwise.

(6) The amount of remuneration to persons other than directors and officers in excess of fifty thousand dollars ($50,000) per annum.

(7) Bonus and profit-sharing arrangements.

(8) Management and service contracts.

(9) Options existing, or to be created, in respect of their securities or other interests.

(10) Financial statements for at least three fiscal years preceding the year of registration, or, if the corporation has not been in existence for a period of three years, financial statements from the date of its formation. All financial statements shall be prepared in accordance with generally accepted accounting principles and audited by a licensee of the California Board of Accountancy.

(11) Any further financial data that the division, with the approval of the board, may deem necessary or appropriate for the protection of the state.

(12) An annual profit-and-loss statement and an annual balance sheet, and a copy of its annual federal income tax return, within 30 calendar days after that return is filed with the Internal Revenue Service.

SEC. 6. Section 19880 of the Business and Professions Code is amended to read:

19880. In addition to the requirements of Section 19841, in order to be eligible to receive a gambling license to own a gambling enterprise, a limited partnership shall comply with all of the following requirements:

(a) Be formed under the laws of this state.

(b) Maintain an office of the limited partnership in the gambling establishment.

(c) Comply with all of the requirements of the laws of this state pertaining to limited partnerships.

(d) Maintain a ledger in the principal office of the limited partnership in California that shall meet both of the following conditions:

(1) At all times reflects the ownership of all interests in the limited partnership.

(2) Be available for inspection by the division at all reasonable times without notice.

(e) Register with the division and supply the following supplemental information to the division:

(1) The organization, financial structure, and nature of the business to be operated, including the names, personal history, and fingerprints of all general partners and key employees, and the name, address, and interest of each limited partner.

(2) The rights, privileges, and relative priorities of limited partners as to the return of contributions to capital, and the right to receive income.

(3) The terms on which limited partnership interests are to be offered.

(4) The terms and conditions on all outstanding loans, mortgages, trust deeds, pledges, or any other indebtedness or security device.

(5) The extent of the holding in the limited partnership of all underwriters, and their remuneration as compensation for services, in the form of salary, wages, fees, or otherwise.

(6) The remuneration to persons other than general partners in excess of fifty thousand dollars ($50,000) per annum.

(7) Bonus and profit-sharing arrangements.

(8) Management and service contracts.

(9) Options existing or to be created.

(10) Financial statements for at least three fiscal years preceding the year of registration, or, if the limited partnership has not been in existence for a period of three years, financial statements from the date of its formation. All financial statements shall be prepared in accordance with generally accepted accounting principles and audited by a licensee of the California Board of Accountancy in accordance with generally accepted auditing standards.

(11) Any further financial data that the division reasonably deems necessary or appropriate for the protection of the state.

(12) An annual profit and loss statement and an annual balance sheet, and a copy of its annual federal income tax return, within 30 calendar days after the return is filed with the Internal Revenue Service.

SEC. 7. Section 22258 of the Business and Professions Code is amended to read:

22258. The following persons are exempt from the requirements of this title:

(a) A person with a current and valid license issued by the California Board of Accountancy and his or her employees while functioning within the scope of their employment.

(b) A person who is an active member of the State Bar of California and his or her employees while functioning within the scope of their employment.

(c) An employee of any trust company or trust business as defined in Chapter 1 (commencing with Section 99) of Division 1 of the Financial Code while functioning within the scope of his or her employment.

(d) A financial institution regulated by the state or federal government, and employees thereof, insofar as the activities of the employees are related to their employment and the activities of the financial institution with respect to tax preparation are subject to federal or state examination or oversight.

(e) A person who is enrolled to practice before the Internal Revenue Service pursuant to Subpart A (commencing with Section 10.1) of Part 10 of Title 31 of the Code of Federal Regulations, and his or her employees while functioning within the scope of his or her employment.

SEC. 8. Section 1365 of the Civil Code is amended to read:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e) (1) A summary of the association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

(A) The name of the insurer.

(B) The type of insurance.

(C) The policy limits of the insurance.

(D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a

reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: ''This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.''

SEC. 9. Section 14202 of the Corporations Code is amended to read:

14202. The Trade and Commerce Agency shall assist other public agencies, nonprofit corporations, or foundations in the development and facilitation of employee-owned businesses. In support of this activity the Trade and Commerce Agency shall do each of the following:

(a) Compile, organize, and make available to the public a library of resources on the subject of employee ownership.

(b) Provide public education on the beneficial aspects of employee-owned businesses and employee participation in business management.

(c) Promote the research of issues relative to the innovative utilization of employee ownership and participation for the purpose of local economic development.

(d) Provide or facilitate the provision of technical assistance on the establishment and successful management of employee-owned businesses.

(e) Promote and participate in seminars, workshops, and conferences to increase awareness especially of professional, private, and public sectors important to economic development and business assistance, of the benefits found to be common to employee-owned businesses.

SEC. 10. Section 14504.2 of the Education Code is amended to read:

14504.2. (a) The Controller may perform quality control reviews of audit working papers to determine whether audits are performed in conformity with subdivision (a) of Section 14503. The Department of Finance may refer an independent auditor of a school district to the Controller for a review pursuant to this section if the Department of Finance finds that an audit of a school district was conducted in a manner that may constitute noncompliance with subdivision (a) of Section 14503. The Controller shall communicate the results of his or her reviews to the Department of Finance, the independent auditor, and the school district or office of the county superintendent of schools for which the audit was performed, and shall review his or her findings with the independent auditor.

(b) Prior to the performance of any quality control reviews, the Controller shall develop and publish guidelines and standards for those reviews. Pursuant to the development of those guidelines and standards, the Controller shall provide opportunity for public comment.

(c) If a school district has received an emergency apportionment pursuant to Article 2 (commencing with Section 41320) or Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24, the Controller shall conduct a quality control review of the audit working papers of the independent auditor who performed the audits for that school district for the prior three fiscal years. If the quality control review of the Controller indicates that the audit was conducted in a manner that may constitute unprofessional conduct as defined pursuant to Section 5100 of the Business and Professions Code, including, but not limited to, gross negligence resulting in a material misstatement in the audit, the Controller shall refer the case to the California Board of Accountancy. If the California Board of Accountancy finds that the independent auditor conducted an audit in an unprofessional manner, the independent auditor is prohibited from performing any school district audit for a period of three years, in addition to any other penalties that the California Board of Accountancy may impose.

(d) In any matter that is referred to the California Board of Accountancy under subdivision (c), the Controller may suspend the independent auditor from performing any school district audits pending final disposition of the matter by the California Board of Accountancy if the Controller gives the independent auditor notice and an opportunity to respond to that suspension. The independent auditor shall be given

credit for any period of suspension if the California Board of Accountancy prohibits the independent auditor from performing audits of the school district under subdivision (c). In no event may the Controller suspend an independent auditor under this subdivision for a period of longer than three years.

(e) The county superintendent of schools or the county board of education may refer an independent auditor of a school district to the California Board of Accountancy for action pursuant to subdivision (c) if an audit of a school district was conducted in a manner that may constitute unprofessional conduct as defined by Section 5100 of the Business and Professions Code, including, but not limited to, gross negligence resulting in a material misstatement in the audit.

SEC. 11. Section 14505 of the Education Code is amended to read:

14505. The governing board of each school district and each office of the county superintendent of schools shall include the following two provisions in their contracts for audits:

(a) A provision to withhold 10 percent of the audit fee until the Controller certifies that the audit report conforms to the reporting provisions of subdivision (a) of Section 14503.

(b) A provision to withhold 50 percent of the audit fee for any subsequent year of a multiyear contract if the prior year's audit report was not certified as conforming to reporting provisions of subdivision (a) of Section 14503. This provision shall include a statement that a multiyear contract will be null and void if a firm or individual is declared ineligible pursuant to subdivision (c) of Section 41020.5. The amount withheld is not payable unless payment is ordered by the California Board of Accountancy or the audit report for that subsequent year is certified by the Controller as conforming to reporting provisions of subdivision (a) of Section 14503.

(c) Within 30 days from the date of receipt of written notification that the Controller refuses to certify an audit report as conforming to reporting provisions of subdivision (a) of Section 14503, an auditor or audit firm having a portion of an audit fee withheld pursuant to these provisions may file an appeal in writing with the California Board of Accountancy. The board shall complete an investigation of the appeal within 90 days of the filing date and, on the basis of the investigation, do either of the following:

(1) Order the Controller to provide notification that the audit report conforms to reporting provisions of subdivision (a) of Section 14503.

(2) Schedule the appeal for a hearing, in which case the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

(d) If the board orders the Controller to provide notification that the audit report conforms to reporting provisions of subdivision (a) of

Section 14503, the Controller shall notify the contracting school district which shall then release the portion of the audit fee being withheld in accordance with this section.

SEC. 12. Section 33420 of the Education Code is amended to read:

33420. (a) The Superintendent of Public Instruction, in cooperation with the Department of Finance and the State Auditor, shall, on or before July 1, 1980, provide for a plan for independent audits of state and federal funds allocated to private agencies that are under contract with the State Department of Education for the provision of educational services.

For the purpose of this article, ''educational services'' includes, but is not limited to, child nutrition and child development services.

To the maximum extent possible, the plan shall conform to audit procedures pursuant to Section 41020.5.

(b) Effective July 1, 1980, the State Department of Education, as a condition to any contract with a private agency for the provision of educational services, shall require a periodic audit of state and federal funds to be conducted by departmental staff auditors or a certified public accountant or public accountant who is licensed by the California Board of Accountancy. For child development services, the audit shall include all funds deposited in the child development fund. For all other educational services, the audit shall be limited to those state and federal funds accruing to the private agency as a result of its contract with the State Department of Education.

(c) If in the course of those audits of a private agency, an audit exception is reported by the certified public accounting firm in excess of a material amount as determined by the Superintendent of Public Instruction, the Superintendent of Public Instruction shall, upon final determination by the superintendent of the amount of the audit exception, collect that audit exception and redistribute the amount collected to the same class of program, or withhold the amount of the audit exception from the next payment to the agency in which the audit exception was discovered.

(d) The State Department of Education shall establish a schedule for audits that meets federal regulations.

(e) The State Department of Education may exempt from the provisions of this section those agencies for which, in the department's estimation, the cost of an audit would be inordinate in relation to the level of funding received by the private agency for the educational services provided.

SEC. 13. Section 41020 of the Education Code is amended to read:

41020. (a) It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children

in California by strengthening fiscal accountability at the district, county, and state levels.

(b) Not later than the first day of May of each fiscal year each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each school district shall either provide for an audit of the books and accounts of the school district, including an audit of school district income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the school district to provide for that auditing. In the event the governing board of a school district has not provided for an audit of the books and accounts of the district by April 1, the county superintendent of schools having jurisdiction over the district shall provide for the audit.

(c) Each audit conducted in accordance with this section shall include all funds of the school district including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the school district and funds of regional occupational centers and programs maintained by the county superintendent of schools, a school district, or pursuant to a joint powers agreement. Each audit shall also include an audit of attendance procedures.

(d) All audit reports for the 1988–89 fiscal year, and for each subsequent fiscal year, shall be developed and reported using a format established by the Controller after consultation with the Superintendent of Public Instruction.

(e) (1) The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

(2) The cost of the audit provided for by a governing board shall be paid from school district funds. The audit of the funds under the jurisdiction and control of the county superintendent of schools shall be paid from the county school service fund.

(f) The audits shall be made by a certified public accountant or a public accountant, licensed by the California Board of Accountancy.

(g) (1) The auditor's report shall include each of the following:

(A) A statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 3 (commencing with Section 14500) of Part 9 of Division 1 of Title 1.

(B) A summary of audit exceptions and management improvement recommendations.

(2) To the extent possible, a description of correction or plan of correction shall be incorporated in the audit report, describing the specific actions that are planned to be taken, or that have been taken, to correct the problem identified by the auditor. The descriptions of specific

actions to be taken or that have been taken shall not solely consist of general comments such as ''will implement,'' ''accepted the recommendation,'' or ''will discuss at a later date.''

(h) Not later than December 15, a report of each audit for the preceding fiscal year shall be filed with the county superintendent of schools of the county in which the school district is located, the State Department of Education, and the Controller. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by such audit reports.

(i) Commencing with the 1993–94 audit of school districts pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a school district under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have been either corrected or an acceptable plan of correction has been developed.

(j) Upon submission of the final audit report to the governing board of each school district and subsequent receipt of the audit by the county superintendent of schools having jurisdiction over the school district, the county office of education shall do all of the following:

(1) Review audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions. Attendance exceptions or issues shall include, but not be limited to, those related to revenue limits, adult education, and independent study.

(2) If a description of the correction or plan of correction has not been provided as part of the audit required by this section, then the county superintendent of schools shall notify the school district and request the governing board of the school district to provide to the county superintendent of schools a description of the corrections or plan of correction by March 15.

(3) Review the description of correction or plan of correction and determine its adequacy. If the description of the correction or plan of correction is not adequate, the county superintendent of schools shall require the school district to resubmit that portion of its response that is inadequate.

(k) Each county superintendent of schools shall certify to the Superintendent of Public Instruction, by May 15, that his or her staff has reviewed all audits of school districts under his or her jurisdiction for the prior fiscal year, that all exceptions that the county superintendent was required to review were reviewed, and that all of those exceptions, except as otherwise noted in the certification, have been corrected by the school district or an acceptable plan of correction has been submitted to the county superintendent of schools. In addition, the county

superintendent shall identify by school district, any attendance-related audit exception that had a fiscal impact on state funds, and require the school district to which the attendance-related audit exception was directed to submit the appropriate forms for processing by the Superintendent of Public Instruction.

(*l*) In the audit of a school district for a subsequent year, the auditor shall review the correction or plan or plans of correction submitted by the school district to determine if the exceptions have been resolved. If not, then the auditor shall immediately notify the appropriate county office of education and the State Department of Education and restate the exception in the audit report. After receiving that notification, the State Department of Education shall either consult with the school district to resolve the exception or require the county superintendent of schools to follow up with the school district.

(m) (1) The Superintendent of Public Instruction shall be responsible for assuring that school districts have either corrected or developed a plan of correction for any or all of the following:

(A) All federal and state compliance audit exceptions identified in the audit.

(B) Any exceptions that the county superintendent certifies as of May 15 have not been corrected.

(C) Any repeat audit exceptions that are not assigned to a county superintendent to correct.

(2) In addition, the Superintendent of Public Instruction shall be responsible for assuring that county superintendents of schools and county boards of education that serve as the governing board of a school district either correct all audit exceptions identified in the audits of county superintendents of schools and of the school district for which the county board of education serves as the governing board or develop an acceptable plan of correction for those exceptions.

(n) In order to facilitate the correction of the exceptions identified by the audits issued pursuant to this section, commencing with 1994–95 audits pursuant to this section, the Controller shall require auditors to categorize audit exceptions in the audit report in a manner that will make it clear to both the county superintendent of schools and the Superintendent of Public Instruction which exceptions they are responsible for assuring the correction of by a school district. In addition, the Controller annually shall select a sampling of county superintendents of schools and perform a followup of the audit resolution process of those county superintendents of schools and report the results of that followup to the Superintendent of Public Instruction and the county superintendents of schools that were reviewed.

(o) The county superintendent of schools shall adjust the future local property tax requirements to correct audit exceptions relating to school district tax rates and tax revenues.

(p) If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from school district funds or the county school service fund, as the case may be.

(q) Audits of regional occupational centers and programs are subject to the provisions of this section.

(r) Nothing in this section shall be construed to authorize examination into or report on the curriculum used or provided for in any school district.

SEC. 14. Section 41020.5 of the Education Code is amended to read:

41020.5. (a) Whenever the Controller determines by two consecutive quality control reviews pursuant to Section 14504.2 that audits performed by a certified public accountant or public accountant under Section 41020 were not performed in substantial conformity with provisions of the audit guide, or that the audit reports, including amended reports, submitted by February 15 following the close of the fiscal year audited, for two consecutive years do not conform to provisions of the audit guide as required by Section 14504, the Controller shall notify in writing the certified public accountant or public accountant and the California Board of Accountancy.

If the certified public accountant or public accountant does not file an appeal in writing with the California Board of Accountancy within 30 calendar days after receipt of the Controller's notification, the Controller's determination under this section shall be final.

(b) If an appeal is filed with the California Board of Accountancy, the board shall complete an investigation of the appeal within 90 days of the filing date. On the basis of the investigation, the board may do either of the following:

(1) Find that the Controller's determination should not be upheld and has no effect.

(2) Schedule the appeal for a hearing, in which case, the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

(c) If the Controller's determination under subdivision (a) becomes final, the certified public accountant or public accountant shall be ineligible to conduct audits under Section 41020 for a period of three years, or, in the event of an appeal, for any period, and subject to the conditions, that may be ordered by the California Board of Accountancy. Not later than the first day of March of each year, the Controller shall

notify each school district and county office of education of those certified public accountants or public accountants determined to be ineligible under this section. School districts and county offices of education shall not use the audit services of a certified public accountant or public accountant ineligible under this section.

For the purposes of this section, the term ''certified public accountant or public accountant'' shall include any person or firm entering into a contract to conduct an audit under Section 41020.

This section shall not preclude the California Board of Accountancy from taking any disciplinary action it deems appropriate under other provisions of law.

SEC. 15. Section 84040 of the Education Code is amended to read:

84040. (a) It is the intent of the Legislature to encourage sound fiscal management practices among community college districts for the most efficient and effective use of public funds for the education of community college students by strengthening fiscal accountability at the district and state levels.

(b) The governing board of each community college district shall provide for an annual audit of all funds, books, and accounts of the district in accordance with regulations of the board of governors. The audit shall be made by certified public accountants licensed by the California Board of Accountancy. In the event the governing board of a community college district fails to provide for an audit, the board of governors shall provide for an audit, and if the board of governors fails or is unable to make satisfactory arrangements for such an audit, the Department of Finance shall make arrangements for the audit. The cost of any audit described above shall be paid from district funds.

(c) The board of governors shall adopt criteria and standards for periodic assessment of the fiscal condition of community college districts, and these regulations regarding the review and improvement of district fiscal conditions as necessary to encourage sound fiscal management practices. In so doing:

(1) The governing board of a community college district, as required by regulations of the board of governors, shall periodically report information to the board of governors regarding the fiscal condition of the district.

(2) The board of governors, by regulation, shall develop standards for district maintenance of sound fiscal conditions. The regulations shall authorize a board comprehensive management review of any community college district which, after assessing itself or being assessed in accordance with board criteria and standards, is shown to be experiencing fiscal difficulty. On the basis of the findings of the management review, the board of governors may recommend appropriate changes in a district's management practices.

(3) The board of governors, by regulation, shall develop appropriate procedures and actions for districts that fail to achieve fiscal stability or that fail to comply with the board of governors' recommendations. The procedures and remedies may include the appointment of a special trustee to manage the district. The board of governors shall be authorized to reduce or withhold apportionment to districts to pay for the cost of the special trustee, management review, or other extraordinary costs resulting from the district's fiscal difficulties and to ensure the stabilization of the district's financial condition.

(4) The board of governors shall report to the chairs of the educational policy and fiscal committees of both houses of the Legislature, the Director of Finance, and the Governor any corrective action taken by the district and any action taken against the district pursuant to paragraph (3).

SEC. 15.5. Section 84040 of the Education Code is amended to read:

84040. (a) It is the intent of the Legislature to encourage sound fiscal management practices among community college districts for the most efficient and effective use of public funds for the education of community college students by strengthening fiscal accountability at the district and state levels.

(b) The governing board of each community college district shall provide for an annual audit of all funds, books, and accounts of the district in accordance with regulations of the board of governors. The audit shall be made by certified public accountants licensed by the California Board of Accountancy. In the event the governing board fails to provide for an audit, the board of governors shall provide for the audit, and if the board of governors fails or is unable to make satisfactory arrangements for the audit, the Department of Finance shall make arrangements for the audit. The cost of any audit described above shall be paid from district funds.

(c) The board of governors shall adopt criteria and standards for periodic assessment of the fiscal condition of community college districts, and these regulations regarding the review and improvement of district fiscal conditions as necessary to encourage sound fiscal management practices. In so doing:

(1) The governing board of a community college district, as required by regulations of the board of governors, shall periodically report information to the board of governors regarding the fiscal condition of the district.

(2) The board of governors, by regulation, shall develop standards for district maintenance of sound fiscal conditions. The regulations shall authorize a comprehensive management review by the board of governors of any community college district that, after assessing itself

or being assessed in accordance with criteria and standards of the board of governors, is shown to be experiencing fiscal difficulty. On the basis of the findings of the management review, the board of governors may recommend appropriate changes in a district's management practices.

(3) The board of governors, by regulation, shall develop appropriate procedures and actions for districts that fail to achieve fiscal stability or that fail to comply with the board of governors' recommendations. The procedures and remedies may include the appointment of a special trustee to manage the district. The board of governors shall be authorized to reduce or withhold apportionment to districts to pay for the cost of the special trustee, management review, or other extraordinary costs resulting from the district's fiscal difficulties and to ensure the stabilization of the district's financial condition.

(4) The board of governors shall report to the chairs of the educational policy and fiscal committees of both houses of the Legislature, the Director of Finance, and the Governor any corrective action taken by the district and any action taken against the district pursuant to paragraph (3).

SEC. 16. Section 22056 of the Financial Code is amended to read:

22056. This division does not apply to the Trade and Commerce Agency or to the California Integrated Waste Management Board.

SEC. 17. Section 705 of the Food and Agricultural Code is amended to read:

705. All state agencies, including, but not limited to, the California State World Trade Commission, Trade and Commerce Agency, Department of Finance, and the Employment Development Department shall cooperate with the director in the compilation of pertinent statistical data and shall respond to requests by the director for information in a timely manner.

SEC. 18. Section 58937 of the Food and Agricultural Code is amended to read:

58937. (a) Any money that is collected by the director pursuant to this chapter shall be deposited in a bank or other depository that is approved by the Director of Finance, allocated to each marketing order under which it is collected. Except as provided in Section 58941, these funds shall be disbursed by the director or the advisory board only for the necessary expenses that are incurred by the advisory board and that are approved by the director with respect to each marketing order. Allowable expenses include expenses generated by the auditing requirement imposed by subdivision (b).

Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations that are prescribed by the director. The expenditure of these funds is exempt from the provisions of Section 925.6 of the Government Code.

(b) All such expenditures by the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public accountant.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

A copy of the audit shall be delivered within 30 days after the completion of the audit to the Governor, the director, and the Controller.

SEC. 19. Section 59947 of the Food and Agricultural Code is amended to read:

59947. (a) The funds that are deposited pursuant to Section 59946 shall be disbursed by the director or the marketing program committee, pursuant to regulations prescribed by him or her, only for the expenditures that are incurred by the marketing program committee in carrying out the specific purposes and provisions of the marketing program, including all necessary expenses that are incurred in the formulation, administration, and enforcement of the marketing program, and expenses generated by the auditing requirement imposed by subdivision (b).

(b) All expenditures shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public accountant.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

A copy of the audit shall be delivered, within 30 days after the completion of the audit, to the Governor, the director, and the Controller.

SEC. 20. Section 64309 of the Food and Agricultural Code is amended to read:

64309. (a) Any money that is collected by the director pursuant to this chapter shall be deposited in a bank or other depository which is approved by the Director of Finance. Funds which are so collected shall be deposited and disbursed in conformity with appropriate regulations prescribed by the director and may be allocated to pay for expenses generated by the auditing requirement imposed by subdivision (b). The expenditure of those funds shall be exempt from the provisions of Section 925.6 of the Government Code.

(b) All expenditures by the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public accountant.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

A copy of the audit shall be delivered within 30 days after the completion thereof to the Governor, the director, and the Controller.

SEC. 21. Section 64696 of the Food and Agricultural Code is amended to read:

64696. (a) All money that is collected by the director pursuant to this chapter shall be deposited in any bank, or other depository that is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the director or the council only for the necessary expenses that are incurred by the council and the director in carrying out the purposes and provisions of this chapter, including expenses generated by the auditing requirement contained in this section. Money that is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations that are prescribed by the director. The expenditure of the money is exempt from the provisions of Sections 925.6 and 16304 of the Government Code.

(b) All expenditures by the council and the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public accountant.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

A copy of the audit shall be delivered within 30 days after completion of the audit to the Governor, the director, and the Controller.

SEC. 22. Section 76906 of the Food and Agricultural Code is amended to read:

76906. (a) All money that is collected by the director pursuant to this chapter shall be deposited in any bank, or other depository that is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the director or the council only for the necessary expenses that are incurred by the council and the director in carrying out the purposes and provisions of this chapter, including expenses generated by the auditing requirement contained in this section. Money that is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations which are prescribed by the director. The expenditure of the money is exempt from Section 925.6 and 16304 of the Government Code.

(b) All expenditures by the council and the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public account.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

(c) A copy of the audit shall be delivered within 30 days after completion of the audit to the Governor, the director, and the Controller.

SEC. 23. Section 78558 of the Food and Agricultural Code is amended to read:

78558. (a) All money that is collected by the council pursuant to this chapter shall be deposited in any bank, or other depository that is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the council, upon approval of the secretary, only for the necessary expenses that are incurred by the council and the secretary in carrying out the purposes and provisions of this chapter, including expenses generated by the auditing requirement contained in this section. Money that is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations adopted by the secretary. The expenditure of the money is exempt from Sections 925.6 and 16304 of the Government Code.

(b) All expenditures by the council and the secretary shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public accountant.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

(c) A copy of the audit shall be delivered by the auditor to the council within 30 days after completion of the audit. Upon receipt, the council shall deliver a copy of the audit to the Governor, the secretary, the Controller, and to any member of the public requesting a copy.

SEC. 24. Section 7504 of the Government Code is amended to read:

7504. (a) All state and local public retirement systems shall, not less than triennially, secure the services of an enrolled actuary. An enrolled actuary, for the purposes of this section, means an actuary enrolled under subtitle C of Title III of the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406) and who has demonstrated experience in public retirement systems. The actuary shall perform a valuation of the system utilizing actuarial assumptions and techniques established by the agency that are, in the aggregate, reasonably related to the experience and the actuary's best estimate of anticipated experience under the system. Any differences between the actuarial assumptions and techniques used by the actuary that differ significantly from those established by the agency shall be disclosed in the actuary's report and the effect of the differences on the actuary's statement of costs and obligations shall be shown.

(b) All state and local public retirement systems shall secure the services of a qualified person to perform an attest audit of the system's financial statements. A qualified person means any of the following:

(1) A person who is licensed to practice as a certified public accountant in this state by the California Board of Accountancy.

(2) A person who is registered and entitled to practice as a public accountant in this state by the California Board of Accountancy.

(3) A county auditor in any county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3).

(4) A county auditor in any county having a pension trust and retirement plan established pursuant to Section 53216.

(c) All state and local public retirement systems shall submit audited financial statements to the State Controller at the earliest practicable opportunity within six months of the close of each fiscal year. However, the State Controller may delay the filing date for reports due in the first year until the time as report forms have been developed that, in his or her judgment, will satisfy the requirements of this section. The financial statements shall be prepared in accordance with generally accepted accounting principles in the form and manner prescribed by the State Controller. The penalty prescribed in Section 53895 shall be invoked for failure to comply with this section. Upon a satisfactory showing of good cause, the State Controller may waive the penalty for late filing provided by this subdivision.

(d) The State Controller shall compile and publish a report annually on the financial condition of all state and local public retirement systems containing, but not limited to, the data required in Section 7502.

SEC. 25. Section 7591 of the Government Code is amended to read:

7591. (a) The amount of fifteen million dollars ($15,000,000) is appropriated, subject to subdivision (b), from the General Fund to the Trade and Commerce Agency for a loan for allocation over three years in three equal amounts to that nonprofit organization currently named the San Diego National Sports Training Foundation, for purposes of developing and constructing, with the participation and advice of the United States Olympic Committee, a California Olympic Training Center.

(b) The loan allocations provided for by this section shall be made no earlier than December 31, of 1990, 1991, and 1992, and shall be made only if the San Diego National Sports Training Foundation is able and willing by each of those dates to provide the sum of five million dollars ($5,000,000), for purposes of developing and constructing, with the participation and advice of the United States Olympic Committee, a California Olympic Training Center.

(c) Loan allocations shall be repaid in full no later than 20 years from the date of receipt at a rate of interest equal to the average Pooled Money Investment Account rate over the period during which any portion of an allocated amount remains outstanding.

SEC. 26. Section 8899.10 of the Government Code is amended to read:

8899.10. The Legislature finds and declares all of the following:

(a) (1) As demonstrated by the California earthquake of October 17, 1989, the citizens of California live under the constant shadow of death, personal injury, and property damage from earthquakes.

(2) During the same year as the California earthquake of October 17, 1989, there were over 15,000 earthquakes of varying magnitude recorded in this state.

(3) A cohesive plan to optimize current and emerging earthquake research for the benefit of the citizens of California does not exist.

(4) A cohesive plan to optimize current and emerging earthquake research is critical to protect the health and safety of the citizens of California.

(b) It is therefore appropriate for the State of California to fund an Earthquake Research Evaluation Conference for the purpose of critiquing existing and emerging technologies for earthquake research and recommending a comprehensive plan for earthquake research in California.

The findings of the Earthquake Research Evaluation Conference should be used by the Seismic Safety Commission, in collaboration with the California Council on Science and Technology, the Office of Competitive Technology in the Trade and Commerce Agency, and the Division of Mines and Geology in the Department of Conservation, as the basis for finalizing and implementing a five-year earthquake research plan for the State of California.

SEC. 27. Section 8899.12 of the Government Code is amended to read:

8899.12. (a) Participants in the EREC shall be selected by the Seismic Safety Commission in collaboration with the California Council on Science and Technology, the Division of Mines and Geology in the Department of Conservation, and the Office of Competitive Technology in the Trade and Commerce Agency. EREC participants shall include, but not be limited to, representatives from all of the following:

(1) Research universities.

(2) Major professional organizations.

(3) State agencies.

(4) Federal agencies.

(5) Private industry.

(b) The organization and management of the EREC shall be the responsibility of the Seismic Safety Commission, in collaboration with the California Council on Science and Technology, the Division of Mines and Geology, and the Office of Competitive Technology.

SEC. 28. Section 8899.16 of the Government Code is amended to read:

8899.16. (a) In order to expedite the development of emerging technologies and to encourage rapid technology transfer, grant awards shall be made to not more than five California companies to conduct feasibility studies that will evaluate new, innovative technologies to improve the understanding of impending earthquakes and their effects.

(b) The Office of Competitive Technology in the Trade and Commerce Agency shall implement this section with the advice of the Division of Mines and Geology in the Department of Conservation.

(c) The Legislature may fund additional studies in accordance with the five-year earthquake research plan developed pursuant to Section 8899.15.

(d) This section shall be implemented only to the extent that funds are available for its implementation.

SEC. 29. Section 8899.21 of the Government Code is amended to read:

8899.21. (a) For the purpose of expediting the development of emerging technologies and encouraging rapid technology transfer, not more than five grant awards shall be made for the 1991–92 fiscal year to commercialize technologies that will predict earthquakes or mitigate their impact. Grant awards may be made to public, nonprofit, not for profit, or private entities.

(b) The Office of Competitive Technology in the Trade and Commerce Agency shall implement this section with the advice of the Division of Mines and Geology in the Department of Conservation and the Seismic Safety Commission. The competitive technology advisory committee shall also advise the Office of Competitive Technology in implementing this section.

(c) Within 90 days of the effective date of this section, the Office of Competitive Technology shall issue a solicitation, pursuant to regulation, inviting project proposals to be submitted no later than 120 days from the date of the request for proposal of solicitation.

(d) A project shall at least do the following:

(1) Lead to the commercialization of technologies that will predict earthquakes or mitigate their impact.

(2) Include significant matching contributions from a California company.

(3) Meet any other requirements that the department determines are consistent with the purposes of this section.

(e) The Office of Competitive Technology shall evaluate project proposals which shall at least include a peer review and an oral review. The Secretary of Trade and Commerce upon recommendation from the Office of Competitive Technology, shall select projects for funding which best achieve the purposes of this section.

(f) A grantee shall submit quarterly progress reports and participate in oral project reviews during the term of the grant.

(g) Projects shall be eligible for additional grant funds only upon successful project performance and the availability of additional earthquake research development program funds.

(h) The Trade and Commerce Agency may adopt regulations to implement the grant program authorized by this section. The Trade and Commerce Agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the Trade and Commerce Agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1. Upon issuing the request for proposal, the office shall publish this fact along with the deadline for grant proposals in the newspapers with the greatest circulation in the major cities in the state, as determined by the office. Upon issuing the request for proposal, the office shall also transmit this information to the Secretary of the Senate and the Chief Clerk of the Assembly for publication in the journals of each house of the Legislature. The request for proposal shall contain a clear description of the criteria to be used to select the projects that are to receive funding pursuant to this chapter.

SEC. 30. Section 11126 of the Government Code is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time

for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, ''employee'' shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee shall include a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, ''lease'' includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed

session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, ''litigation'' includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for

the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121 or 11121.2.

(6) Prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to

volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article shall not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

SEC. 31. Section 14998.4 of the Government Code is amended to read:

14998.4. (a) The commission shall meet at least quarterly and shall select a chairperson and a vice chairperson from among its members. The vice chairperson shall act as chairperson in the chairperson's absence.

(b) Each commission member shall serve without compensation but shall be reimbursed for traveling outside the county in which he or she resides to attend meetings.

(c) The commission shall work to encourage motion picture and television filming in California and to that end, shall exercise all of the powers provided in this chapter.

(d) The commission shall make recommendations to the Legislature, the Governor, the Trade and Commerce Agency, and other state agencies on legislative or administrative actions that may be necessary or helpful to maintain and improve the position of the state's motion picture industry in the national and world markets.

(e) In addition, the commission shall do all of the following:

(1) Adopt guidelines for a standardized permit to be used by state agencies and the director.

(2) Approve or modify the marketing and promotion plan developed by the director pursuant to subdivision (d) of Section 14998.9 to promote filmmaking in the state.

(3) Conduct workshops and trade shows.

(4) Provide expertise in promotional activities.

(5) Hold hearings.

(6) Adopt its own operational rules and procedures.

(7) Counsel the Legislature and the Governor on issues relating to the motion picture industry.

SEC. 32. The heading of Chapter 1 (commencing with Section 15310) of Part 6.7 of Division 3 of Title 2 of the Government Code is amended to read:

CHAPTER 1. TRADE AND COMMERCE AGENCY

SEC. 33. Section 15311 of the Government Code is amended to read:

15311. The Trade and Commerce Agency is administered by the Secretary of Trade and Commerce who shall be appointed by the Governor with the advice and consent of the Senate, and who shall be paid a salary at the amount prescribed under Section 11550.

SEC. 34. Section 15363.6 of the Government Code is amended to read:

15363.6. The secretary shall have the following responsibilities:

(a) Coordinating the various trade, investment, and tourism activities of the Trade and Commerce Agency to ensure that the resources that the state has invested in these programs are used effectively and efficiently and that they foster the state's reputation as a source of high quality, cost-effective goods and services including tourism destinations.

(b) Coordinating, on behalf of the Governor, the use of the overseas trade offices by any state export program not under the California State World Trade Commission, such as those that are operated by the Department of Food and Agriculture and the California Energy Commission, and by any state agency which may have occasion to need the services of the overseas trade offices in carrying out that agency's official duties and responsibilities.

(c) Reporting to the Governor and the Legislature on an annual basis about the policies, plans, budgeting, and accomplishments of the agency and its programs.

(d) In his or her capacity as a member of the Governor's cabinet, coordinating the development of a state policy on economic development and trade, and advising the Governor and members of the cabinet of the potential impacts of regulations on the state's business, economy, and job base. The initial policy and implementation strategy shall be included as a part of the secretary's first annual report to the Governor and the Legislature following enactment of this chapter. Each year thereafter, the secretary's annual report shall discuss economic development and trade policies including accomplishments and needed modifications.

(e) Evaluating, at his or her discretion, the findings and determinations required of any state agency which proposes to adopt regulations under Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1, including economic and cost impacts, reporting

requirements, and alternatives analyses. The secretary shall, during the written comment period specified pursuant to paragraph (9) of subdivision (a) of Section 11346.5, submit written comments into the record of the agency which proposes to adopt those regulations in those instances when the secretary determines that the contents of the notice of the proposed action or the supporting analysis and initial statement of reasons do not sufficiently support the findings and determinations of the agency. The secretary may, at his or her discretion, comment on other aspects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative effects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative impacts of the proposed action considered along with regulatory requirements in place at the federal, state, and local levels.

SEC. 35. Section 26509 of the Government Code is amended to read:

26509. (a) Notwithstanding any other provision of law, including any provision making records confidential, and including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the district attorney shall be given access to, and may make copies of, any complaint against a person subject to regulation by a consumer-oriented state agency and any investigation of the person made by the agency, where that person is being investigated by the district attorney regarding possible consumer fraud.

(b) Where the district attorney does not take action with respect to the complaint or investigation, the material shall remain confidential.

(c) Where the release of the material would jeopardize an investigation or other duties of a consumer-oriented state agency, the agency shall have discretion to delay the release of the information.

(d) As used in this section, a consumer-oriented state agency is any state agency that regulates the licensure, certification, or qualification of persons to practice a profession or business within the state, where the regulation is for the protection of consumers who deal with the professionals or businesses. It includes, but is not limited to, all of the following:

(1) The Dental Board of California.
(2) The Medical Board of California.
(3) The State Board of Optometry.
(4) The California State Board of Pharmacy.
(5) The Veterinary Medical Board.
(6) The California Board of Accountancy.
(7) The California Board of Architectural Examiners.
(8) The State Board of Barbering and Cosmetology.
(9) The Board for Professional Engineers and Land Surveyors.

(10) The Contractors' State License Board.
(11) The Funeral Directors and Embalmers Program.
(12) The Structural Pest Control Board.
(13) The Bureau of Home Furnishings and Thermal Insulation.
(14) The Board of Registered Nursing.
(15) The State Board of Fabric Care.
(16) The State Board of Chiropractic Examiners.
(17) The Board of Behavioral Science Examiners.
(18) The State Athletic Commission.
(19) The Cemetery Program.
(20) The State Board of Guide Dogs for the Blind.
(21) The Bureau of Security and Investigative Services.
(22) The Court Reporters Board of California.
(23) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
(24) The California State Board of Landscape Architects.
(25) The Osteopathic Medical Board of California.
(26) The Division of Investigation.
(27) The Bureau of Automotive Repair.
(28) The State Board of Registration for Geologists and Geophysicists.
(29) The State Board of Nursing Home Administrators.
(30) The Department of Alcoholic Beverage Control.
(31) The Department of Insurance.
(32) The Public Utilities Commission.
(33) The State Department of Health Services.
(34) The New Motor Vehicle Board.

SEC. 36. Section 26915 of the Government Code is amended to read:

26915. (a) Any requirement that an audit be performed by the county auditor may, at the election of the board of supervisors, also be performed by a county employee or officer who meets both of the following qualifications:

(1) The person possesses a valid certificate issued by the California Board of Accountancy and a permit authorizing the person to practice as a certified public accountant or as a public accountant.

(2) The employee or officer is independent in accordance with Rule 101 of the American Institute of Certified Public Accountants' Code of Professional Conduct.

(b) The election made by the board of supervisors pursuant to subdivision (a) may be in effect for no more than two years after the date that the vote is taken by the board, but the election may be renewed upon expiration.

(c) This section shall only be applicable in the County of Orange.

(d) Nothing in this section is intended to preclude a county auditor from performing his or her statutorily prescribed duties.

SEC. 37. Section 26945 of the Government Code is amended to read:

26945. No person shall hereafter be elected or appointed to the office of county auditor of any county unless the person meets at least one of the following criteria:

(a) The person possesses a valid certificate issued by the California Board of Accountancy under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code showing the person to be, and a permit authorizing the person to practice as, a certified public accountant or as a public accountant.

(b) The person possesses a baccalaureate degree from an accredited university, college, or other four-year institution, with a major in accounting or its equivalent, as described in subdivision (a) of Section 5081.1 of the Business and Professions Code, and has served within the last five years in a senior fiscal management position in a county, city, or other public agency, a private firm, or a nonprofit organization, dealing with similar fiscal responsibilities, for a continuous period of not less than three years.

(c) The person possesses a certificate issued by the Institute of Internal Auditors showing the person to be a designated professional internal auditor, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance.

(d) The person has served as county auditor, chief deputy county auditor, or chief assistant county auditor for a continuous period of not less than three years.

SEC. 38. Section 27000.7 of the Government Code is amended to read:

27000.7. (a) No person shall be eligible for election or appointment to the office of county treasurer, county tax collector, or county treasurer-tax collector of any county unless that person meets at least one of the following criteria:

(1) The person has served in a senior financial management position in a county, city, or other public agency dealing with similar financial responsibilities for a continuous period of not less than three years, including, but not limited to, treasurer, tax collector, auditor, auditor-controller, or the chief deputy or an assistant in those offices.

(2) The person possesses a valid baccalaureate, masters, or doctoral degree from an accredited college or university in any of the following major fields of study: business administration, public administration, economics, finance, accounting, or a related field, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance.

(3) The person possesses a valid certificate issued by the California Board of Accountancy pursuant to Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code, showing that person to be, and a permit authorizing that person to practice as, a certified public accountant.

(4) The person possesses a valid charter issued by the Institute of Chartered Financial Analysts showing the person to be designated a Chartered Financial Analyst, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance.

(5) The person possesses a valid certificate issued by the Treasury Management Association showing the person to be designated a Certified Cash Manager, with a minimum of 16 college semester units, or their equivalent, in accounting, auditing, or finance.

(b) This section shall only apply to any person duly elected or appointed as a county treasurer, county tax collector, or county treasurer-tax collector on or after January 1, 1998.

SEC. 39. Section 53131 of the Government Code is amended to read:

53131. As used in this article:

(a) ''Qualified state and local government auditors'' means those auditors employed by state and local governments that meet the independence requirements set forth in the federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions.

(b) ''Independent public accountants'' means a certified public accountant, or a public accountant who is licensed by the California Board of Accountancy who holds a valid permit to practice accountancy.

(c) ''Local agency'' means a city, county, city and county, special district, joint-powers agency, public corporation, nonprofit corporation, or any other agency that is eligible to receive federal block grant funds.

(d) ''State department'' means that state organization designated by law or agreement that allocates block grant funds to local agencies or is otherwise responsible for administering block grant funds.

(e) ''Financial and compliance audit'' means an audit that complies with the financial and compliance audit requirements of the Standards for Audit of Governmental Organizations, Programs, Activities and Functions published by the United States General Accounting Office.

Organization wide financial and compliance audits required by Federal Office of Management and Budget Circulars A-102 and A-110 are acceptable for this purpose.

SEC. 40. Section 68112 of the Government Code is amended to read:

68112. (a) On or before March 1, 1992, each superior and municipal court in each county, in consultation with the local bar, shall prepare and submit to the Judicial Council for review and approval a trial

court coordination plan designed to achieve maximum utilization of judicial and other court resources and statewide cost reductions in court operations of at least 3 percent in the 1992–93 fiscal year, a further 2 percent in the 1993–94 fiscal year, and a further 2 percent in the 1994–95 fiscal year, as applicable. The cost reduction shall be based on the prior year actual expenditures, plus any amount reduced from the budget for court operations by a county as a result of any reduction in state funding made pursuant to Section 13308, increased by the percentage change in population for the prior calendar year and the Trade and Commerce Agency implicit price deflator for state and local government for the prior calendar year. The coordination plan for each court shall be reviewed and approved by the Judicial Council on or before July 1, 1992. Thereafter, commencing in 1995 and every two years thereafter, courts in each county shall prepare, in consultation with the local bar, and submit a trial court coordination plan to the Judicial Council on or before March 1, for review and approval by July 1. The plans shall comply with rules promulgated by the Judicial Council and shall be designed to achieve maximum utilization of judicial and other resources to accomplish increased efficiency in court operations and increased service to the public. Any plan disapproved by the Judicial Council shall be revised and resubmitted within 60 days of notification of disapproval. The Judicial Council may by rule exempt courts from the requirement of filing a new coordination plan for any year if all courts in the county have (1) totally consolidated administrative functions under a single administrative entity, and (2) adopted and implemented a coordination plan in which all courts share each other's work so that cases in all of the county's courts are substantially assigned without regard to whether a judge is on the superior court or the municipal court, and which provides for procedures that implement that sharing of work.

(b) The coordination plan shall take into consideration the elements specified in standards and rules adopted by the Judicial Council and applicable case processing time standards adopted by the Judicial Council. The standards adopted by the Judicial Council shall include, but not be limited to, the following:

(1) The use of blanket cross-assignments allowing judges to hear civil, criminal, or other types of cases within the jurisdiction of another court.

(2) The coordinated or joint use of subordinate judicial officers to hear or try matters.

(3) The coordinated, joint use, sharing or merger of court support staff among trial courts within a county or across counties. In a county with a population of less than 100,000 the coordination plan need not involve merger of superior and justice court staffs if the court can reasonably

demonstrate that the maintenance of separate administrative staffs would be more cost-effective and provide better service.

(4) The assignment of civil, criminal, or other types of cases for hearing or trial, regardless of jurisdictional boundaries, to any available judicial officer.

(5) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(6) The establishment of separate calendars or divisions to hear a particular type of case.

(7) In rural counties, the use of all court facilities for hearings and trials of all types of cases and to accept for filing documents in any case before any court in the county participating in the coordination plan.

(8) The coordinated or joint use of alternative dispute resolution programs such as arbitration.

(9) The unification of the trial courts within a county to the maximum extent permitted by the California Constitution.

(10) The joint development of automated accounting and case-processing systems, including joint use of moneys available under Section 68090.8.

(c) In preparing coordination plans a court or courts in a county may petition the Judicial Council to permit division of the court or courts into smaller administrative units where a courtwide plan would impose an undue burden because of the number of judges or the physical location of the divisions of the court or courts.

(d) In preparing coordination plans, the courts are strongly encouraged to develop a plan that includes all superior and municipal courts in the county.

SEC. 41. Section 11998.1 of the Health and Safety Code is amended to read:

11998.1. It is the intent of the Legislature that the following long-term five-year goals be achieved:

(a) With regard to education and prevention of drug and alcohol abuse programs, the following goals:

(1) Drug and alcohol abuse education has been included within the mandatory curriculum in kindergarten and grades 1 to 12, inclusive, in every public school in California.

(2) Basic training on how to recognize, and understand what to do about, drug and alcohol abuse has been provided to administrators and all teachers of kindergarten and grades 1 to 12, inclusive.

(3) All school counselors and school nurses have received comprehensive drug and alcohol abuse training.

(4) Each school district with kindergarten and grades 1 to 12, inclusive, has appointed a drug and alcohol abuse advisory team of

school administrators, teachers, counselors, students, parents, community representatives, and health care professionals, all of whom have expertise in drug and alcohol abuse prevention. The team coordinates with and receives consultation from the county alcohol and drug program administrators.

(5) Every school board member has received basic drug and alcohol abuse information.

(6) Each school district has a drug and alcohol abuse specialist to assist the individual schools.

(7) Each school in grades 7 to 12, inclusive, has student peer group drug and alcohol abuse programs.

(8) Every school district with kindergarten and grades 1 to 12, inclusive, has updated written drug and alcohol abuse policies and procedures including disciplinary procedures which will be given to every school employee, every student, and every parent.

(9) The California State University and the University of California have evaluated and, if feasible, established educational programs and degrees in the area of drug and alcohol abuse.

(10) Every school district with kindergarten and grades 1 to 12, inclusive, has an established parent teachers group with drug and alcohol abuse prevention goals.

(11) Every school district has instituted a drug and alcohol abuse education program for parents.

(12) Drug and alcohol abuse training has been imposed as a condition for teacher credentialing and license renewal, and knowledge on the issue is measured on the California Basic Education Skills Test.

(13) Drug and alcohol abuse knowledge has been established as a component on standardized competency tests as a requirement for graduation.

(14) Every school district has established a parent support group.

(15) Every school district has instituted policies that address the special needs of children who have been rehabilitated for drug or alcohol abuse problems and who are reentering school. These policies shall consider the loss of schooltime, the loss of academic credits, and the sociological problems associated with drug and alcohol abuse, its rehabilitation, and the educational delay it causes.

(16) The number of drug and alcohol abuse related incidents on school grounds has decreased by 20 percent.

(b) With regard to community programs, the following goals:

(1) Every community-based social service organization that receives state and local financial assistance has drug and alcohol abuse information available for clients.

(2) All neighborhood watch, business watch, and community conflict resolution programs have included drug and alcohol abuse prevention efforts.

(3) All community-based programs that serve schoolaged children have staff trained in drug and alcohol abuse and give a clear, drug- and alcohol-free message.

(c) With regard to drug and alcohol abuse programs of the media, the following goals:

(1) The state has established a comprehensive media campaign that involves all facets of the drug and alcohol abuse problem, including treatment, education, prevention, and intervention that will result in increasing the public's knowledge and awareness of the detrimental effects of alcohol and drug use, reducing the use of alcohol and drugs, and increasing healthy lifestyle choices.

(2) The department on a statewide basis, and the county board of supervisors or its designees at the local level, have:

(A) Assisted the entertainment industry in identifying ways to use the entertainment industry effectively to encourage lifestyles free of substance abuse.

(B) Assisted the manufacturers of drug and alcohol products in identifying ways to use product advertising effectively to discourage substance abuse.

(C) Assisted television stations in identifying ways to use television programming effectively to encourage lifestyles free of substance abuse.

(3) A statewide cooperative fundraising program with recording artists and the entertainment industry has been encouraged to fund drug and alcohol abuse prevention efforts in the state.

(d) With regard to drug and alcohol abuse health care programs, the following goals:

(1) The number of drug and alcohol abuse-related medical emergencies has decreased by 4 percent per year.

(2) All general acute care hospitals and AIDS medical service providers have provided information to their patients on drug and alcohol abuse.

(3) The Medical Board of California, the Psychology Examining Committee, the Board of Registered Nursing, and the Board of Behavioral Science Examiners have developed and implemented the guidelines or regulations requiring drug and alcohol abuse training for their licensees, and have developed methods of providing training for those professionals.

(e) With regard to private sector drug and alcohol abuse programs, the following goals:

(1) A significant percentage of businesses in the private sector have developed personnel policies that discourage drug and alcohol abuse and encourage supervision, training, and employee education.

(2) Noteworthy and publicly recognized figures and private industry have been encouraged to sponsor fundraising events for drug and alcohol abuse prevention.

(3) Every public or private athletic team has been encouraged to establish policies forbidding drug and alcohol abuse.

(4) The private sector has established personnel policies that discourage drug and alcohol abuse but encourage treatment for those employees who require this assistance.

(f) With regard to local government drug and alcohol abuse programs, the following goals:

(1) Every county has a five-year master plan to eliminate drug and alcohol abuse developed jointly by the county-designated alcohol and drug program administrators, reviewed jointly by the advisory boards set forth in paragraph (2), and approved by the board of supervisors. For those counties in which the alcohol and drug programs are jointly administered, the administrator shall develop the five-year master plan. To the degree possible, all existing local plans relating to drug or alcohol abuse shall be incorporated into the master plan.

(2) Every county has an advisory board on alcohol problems and an advisory board on drug programs. The membership of these advisory boards is representative of the county's population and is geographically balanced. To the maximum extent possible the county advisory board on alcohol problems and the county advisory board on drug programs will have representatives of the following:

(A) Law enforcement.

(B) Education.

(C) The treatment and recovery community, including a representative with expertise in AIDS treatment services.

(D) Judiciary.

(E) Students.

(F) Parents.

(G) Private industry.

(H) Other community organizations involved in drug and alcohol services.

(I) A representative of organized labor responsible for the provision of Employee Assistance Program services.

If any of these areas is not represented on the advisory bodies, the administrator designated in paragraph (1) shall solicit input from a representative of the nonrepresented area prior to the development of a master plan pursuant to paragraph (1).

(3) Every county public social service agency has established policies that discourage drug and alcohol abuse and encourage treatment and recovery services when necessary.

(4) Every local unit of government has an employee assistance program that addresses drug and alcohol abuse problems.

(5) Every local unit of government has considered the potential for drug and alcohol abuse problems when developing zoning ordinances and issuing conditional use permits.

(6) Every county master plan includes treatment and recovery services.

(6.5) Every county master plan includes specialized provisions to ensure optimum alcohol and drug abuse service delivery for handicapped and disabled persons.

(7) Every local unit of government has been encouraged to establish an employee assistance program that includes the treatment of drug and alcohol abuse-related programs.

(8) Every local governmental social service provider has established a referral system under which clients with drug and alcohol abuse problems can be referred for treatment.

(9) Every county drug and alcohol abuse treatment or recovery program that serves women gives priority for services to pregnant women.

(10) Every alcohol and drug abuse program provides acquired immune deficiency syndrome (AIDS) information to all program participants.

(g) With regard to state and federal government drug and alcohol abuse programs, the following goals:

(1) The Department of Alcoholic Beverage Control has informed all alcohol retailers of the laws governing liquor sales and has provided training available to all personnel selling alcoholic beverages, on identifying and handling minors attempting to purchase alcohol.

(2) The Office of Criminal Justice Planning has required all applicants for crime prevention and juvenile justice and delinquency prevention funds to include drug and alcohol abuse prevention efforts in their programs.

(3) All county applications for direct or indirect drug and alcohol services funding from the department include a prevention component.

(4) The Superintendent of Public Instruction has employed drug and alcohol abuse school prevention specialists and assisted school districts with the implementation of prevention programs.

(5) The State Department of Mental Health has staff trained in drug and alcohol abuse prevention who can assist local mental health programs with prevention efforts.

(6) The Department of the California Highway Patrol, as permitted by the United States Constitution, has established routine statewide sobriety checkpoints for driving while under the influence.

(7) The Department of Corrections and the Department of the Youth Authority have provided drug and alcohol abuse education and prevention services for all inmates, wards, and parolees. Both departments have provided drug and alcohol abuse treatment services for any inmate, ward, or parolee determined to be in need of these services, or who personally requests these services.

(8) The Department of Motor Vehicles has distributed prevention materials with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the Department of Motor Vehicles.

(9) Federal prevention programs have been encouraged to follow the master plan.

(10) State licensing and program regulations for drug and alcohol abuse treatment programs have been consolidated and administered by one state agency.

(11) State treatment funding priorities have been included to specially recognize the multiple diagnosed client who would be eligible for services from more than one state agency.

(12) Every state agency has formalized employee assistance programs that include the treatment of drug and alcohol abuse-related problems.

(13) The state master plan includes specialized provisions to ensure optimum drug and alcohol abuse service delivery for handicapped and disabled persons.

(14) The Trade and Commerce Agency, in coordination with private industry, encourages the creation of employee alcohol and drug abuse prevention programs in the workplace or provides information to employees on treatment or recovery programs that are available to them.

(h) With regard to private sector direct service providers, the following goals:

(1) Drinking drivers programs have provided clear measurements of successful completion of the program to the courts for each court-ordered client.

(2) Sufficient drug and alcohol treatment and recovery services exist throughout the state to meet all clients' immediate and long-range needs.

(3) Each county to the extent possible provides localized alcohol and drug treatment and recovery services designed for individuals seeking assistance for polydrug abuse.

(4) Adequate nonresidential and residential services are available statewide for juveniles in need of alcohol or drug abuse services.

(5) Each provider of alcohol or drug services has been certified by the state.

(6) Drug and alcohol abuse treatment providers provide general acquired immune deficiency syndrome (AIDS) information during treatment.

(i) With regard to supply regulation and reduction in conjunction with drug and alcohol abuse, the following goals:

(1) The California National Guard supports federal, state, and local drug enforcement agencies in counternarcotic operations as permitted by applicable laws and regulations.

(2) Each county has a drug and alcohol abuse enforcement team, designated by the board of supervisors. This team includes all components of the criminal justice system. This team shall be responsible to the board of supervisors, shall coordinate with the drug and alcohol abuse advisory board and the county on all criminal justice matters relating to drug and alcohol abuse, and shall coordinate, and actively participate, with the county alcohol and drug program administrators throughout the development and implementation of the five-year master plan.

(3) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, the Department of the California Highway Patrol, the Office of Traffic Safety, and the Department of Justice have established a state level drug and alcohol abuse enforcement team that includes representatives from all facets of criminal justice. The lead agency for the enforcement team has been designated by the Governor. This team advises the state and assists the local teams.

(4) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, and the Department of Justice have, as a priority when determining training subjects, prevention seminars on drug and alcohol abuse. The Commission on Peace Officer Standards and Training has, as a priority when determining training subjects, drug and alcohol enforcement.

(5) The Department of the California Highway Patrol, as permitted by the United States Constitution, will in conjunction with establishing sobriety checkpoints statewide, assist local law enforcement agencies with the establishment of local programs.

(6) Counties with more than 10 superior court judgeships have established programs under which drug cases receive swift prosecution by well-trained prosecutors before judges who are experienced in the handling of drug cases.

(7) The courts, when determining bail eligibility and the amount of bail for persons suspected of a crime involving a controlled substance, shall consider the quantity of the substance involved when measuring the danger to society if the suspect is released.

(8) Drunk driving jails have been established that provide offender education and treatment during incarceration.

(9) All probation and parole officers have received drug and alcohol abuse training, including particular training on drug recognition.

(10) All parolees and persons on probation with a criminal history that involves drug or alcohol abuse have conditions of parole or probation that prohibit drug and alcohol abuse.

(11) The Judicial Council has provided training on drug and alcohol abuse for the judges.

(12) The courts, when sentencing offenders convicted of selling drugs, consider ''street value'' of the drugs involved in the underlying crime.

(13) Judges have been encouraged to include drug and alcohol abuse treatment and prevention services in sentences for all offenders. Judges are requiring, as a condition of sentencing, drug and alcohol abuse education and treatment services for all persons convicted of driving under the influence of alcohol or drugs.

(14) Juvenile halls and jails provide clients with information on drug and alcohol abuse.

(15) The estimated number of clandestine labs operating in California has decreased by 10 percent per year.

(16) Each local law enforcement agency has developed, with the schools, protocol on responding to school drug and alcohol abuse problems.

(17) Every county has instituted a mandatory driving while under the influence presentence offender evaluation program.

SEC. 42. Section 33492.71 of the Health and Safety Code is amended to read:

33492.71. (a) This section shall apply to each redevelopment project area created pursuant to this article with a redevelopment plan that contains the provisions required by Section 33670. All amounts calculated pursuant to this section shall be calculated after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, 33334.6, and 33492.76, and the amounts required to be paid by school and community college districts pursuant to Section 33492.78 have been deducted from the local tax increment funds received by the agency in the applicable fiscal year.

(b) The payments made pursuant to this section shall be in addition to any amounts the affected taxing entities receive pursuant to subdivision (a) of Section 33670. The agency shall reduce its payments pursuant to this section to the authority or an affected taxing entity by any amount the agency has paid, directly or indirectly, pursuant to Section 33445 and with the agreement of the authority or the affected taxing entity, or pursuant to any other provision of law other than this

section for, or in connection with a public facility owned or leased by the authority or that affected taxing entity and with the agreement of the authority or that affected taxing entity.

(c) Commencing in the first fiscal year in which a redevelopment agency receives tax-increment revenue from a project area created pursuant to this article, the agency shall pay the following amounts to the following entities, and the agency shall not be obligated to pay any additional sums to any taxing entities pursuant to Section 33607.5 and subdivision (b) of Section 33676:

(1) (A) Thirty-five percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted each fiscal year shall be paid to the authority to finance in whole or in part, its responsibilities in providing for the reuse of Fort Ord.

(B) Thirty-five percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 of, as modified by Section 33492.76, has been deducted each fiscal year shall be paid to or retained by the redevelopment agency of the city or county in which the project area is located, to finance, in whole or in part, its responsibilities in providing for the reuse of Fort Ord.

(C) Of the amount referenced in subparagraph (B), each city may elect to receive from its agency, and the agency shall pay, an amount not to exceed 25 percent of the tax-increment revenue generated from a project area established pursuant to this article, to alleviate the financial burden and detriment incurred as a result of the adoption of the redevelopment plan in each year until the sixth fiscal year after the year in which the agency is first allocated one hundred thousand dollars ($100,000) or more in tax-increment revenues.

(D) Upon dissolution of the authority, the amount allocated pursuant to this section shall continue to be paid to the accounts of the authority insofar as needed to pay principal and interest or other amounts on debt that was incurred by the authority. Funds that would be allocated pursuant to this section that exceed the amounts necessary to pay debt service on authority debt shall be divided as follows: 54 percent shall be allocated to the city or county redevelopment agency that establishes the project area; 38 percent shall be allocated to the county; and 8 percent shall be allocated to other affected taxing entities.

(2) Twenty-five percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted each

fiscal year shall be paid to the county to alleviate the financial burden and detriment to the county incurred because of the establishment of the project area.

(3) Not to exceed 5 percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted each fiscal year shall be paid to other affected taxing entities as defined in Section 33492.27, but excluding the entities specified in paragraphs (1) and (2), and excluding school and community college districts, in order to alleviate the financial burden and detriment incurred by those affected taxing entities because of the establishment of the project area. If the total payments made pursuant to this paragraph are less than 5 percent of the tax increment revenue received by the agency pursuant to this article, the remaining portion of the revenue available as a result of this paragraph shall be allocated as follows: 37 percent to the agency, 37 percent to the authority, and 26 percent to the county.

(d) Notwithstanding subdivision (c), through and including the second fiscal year after the certification date established pursuant to Section 33492.9, the amount of tax increment revenue the redevelopment agencies of the Cities of Marina and Seaside or the County of Monterey are required to pay to other entities as prescribed in paragraph (1) shall be modified as follows:

(1) For each of those fiscal years, the board shall determine an amount equal to 100 percent of the revenue payable to the city or county establishing the project area from all ad valorem property taxes, including allocations of property tax increment revenues pursuant to subdivision (c), sales taxes, utility users taxes, business license taxes, real property transfer taxes, franchise taxes, transient occupancy taxes, and payments received as a result of vehicle and trailer coach registration, and cigarette and gasoline taxes except for payments received as a result of vehicle registrations because of military personnel occupying Fort Ord, attributable to the property, population, and economic activity that is within the jurisdiction of each local entity that has established a redevelopment project area pursuant to this subdivision and is also within the area of Fort Ord.

(2) If the amount determined pursuant to paragraph (1) for a fiscal year is less than four hundred thousand dollars ($400,000), the redevelopment agency of the local entity that established the project area shall retain tax-increment revenue received because of the project area so that the sum of the retained tax-increment revenue, exclusive of required deposits to the Low and Moderate Income Housing Fund and the amount of revenue determined pursuant to paragraph (1), equals four hundred thousand dollars ($400,000), but in no event exceeding 100

percent of the tax-increment revenue received for the project area for that fiscal year. Any tax-increment revenue received by the redevelopment agency that established the project area which exceeds the amount necessary to bring the total of the amount calculated pursuant to paragraph (1), plus the tax increment retained by the agency pursuant to this subdivision to four hundred thousand dollars ($400,000) shall be distributed pursuant to subdivision (c).

(e) The board may increase or decrease the qualified minimum level of increment funding set in paragraph (2) of subdivision (d) above four hundred thousand dollars ($400,000), if the board determines, based on substantial evidence, that the costs of providing police and fire protection services to the area of Fort Ord within the local agency's redevelopment agency's project area exceed or are less than this amount. In the event that any city which does not now have jurisdiction over territory within the area of Fort Ord subsequently annexes territory within the area of Fort Ord, the board may provide for a qualified minimum level of increment funding at a level that it determines, based on substantial evidence as to the cost of providing police and fire protection services to the area of Fort Ord within the local agency's redevelopment agency's project area is appropriate for a period not to exceed three years, but is under no obligation to do so.

(f) Because this article provides for an allocation of tax-increment revenue arising from the redevelopment of the area of Fort Ord among the affected taxing entities for the purpose of alleviating any financial burden or detriment that is caused by the redevelopment plan, the consultations with the affected taxing entities shall not include the payment of supplemental moneys, but may only include the discussion of possible modifications in the redevelopment plan, including, but not limited to, the timing of projects, selection of projects, scope of projects, and the type of financing that is being considered for the projects.

(g) (1) All moneys received by the authority from a redevelopment agency shall be deposited in a separate fund from all other moneys of the authority.

(2) The authority shall annually report on the total amount of moneys deposited into the fund during the year; the specific project and programs which were financed with the moneys, including amounts expended per project and program; and the beginning and ending balance of the fund.

(3) The moneys in the fund shall be exclusively expended for the purpose of financing the development and redevelopment of basewide facilities as identified in the basewide public capital facilities plan adopted pursuant to Section 67675 of the Government Code.

(4) The authority shall have an independent financial audit annually prepared on the fund in accordance with generally accepted auditing

standards and rules of governing auditing reports promulgated by the California Board of Accountancy.

(h) Notwithstanding any other provision of law, no tax increment moneys, including moneys paid from a redevelopment agency to Fort Ord Reuse Authority or any affected taxing entity, shall finance the development or redevelopment of buildings owned or operated by the California State University or the University of California.

SEC. 43. Section 34053 of the Health and Safety Code is amended to read:

34053. For the purpose of providing disaster relief to farmworkers in communities subject to a natural disaster, the department shall give priority to awarding grants in communities participating in the Special Housing Program for Migratory Workers (Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 33) and the Trade and Commerce Agency shall give priority to funding those purposes authorized by the Rural Emergency Assistance Housing Infrastructure Program (Article 6 (commencing with Section 15373.96) of Chapter 2.5 of Part 6.7 of Division 3 of Title 2 of the Government Code).

SEC. 44. Section 34327.6 of the Health and Safety Code is amended to read:

34327.6. All funds of housing authorities not subject to audit by a federal agency shall be audited at least once each year at the expense of the housing authority by a certified public accountant or a public accountant holding a valid permit issued by the California Board of Accountancy. Audits made by a certified public accountant, or a public accountant, together with a final balance sheet and operations statement for the year for all authority funds, shall be filed for record purposes with the Department of Housing and Community Development. The authority shall prepare and file with the Department of Housing and Community Development a budget for the year for which the audit is taken with each audit prepared or submitted pursuant to this section.

SEC. 45. Section 41503.6 of the Health and Safety Code is amended to read:

41503.6. (a) The Legislature finds and declares that the California Pollution Control Financing Authority and the Trade and Commerce Agency, working with the south coast district, have established successful programs to assist small businesses in complying with district rules and financing the purchase of pollution control equipment.

(b) The Treasurer, the California Pollution Control Financing Authority, and the Trade and Commerce Agency shall work with, and provide all feasible assistance to, districts to increase opportunities for small businesses to comply with the rules and regulations of the district. That assistance may include loans, loan guarantees, and other forms of financial assistance.

SEC. 46. Section 41865 of the Health and Safety Code is amended to read:

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) ''Sacramento Valley Air Basin'' means the area designated by the state board pursuant to Section 39606.

(2) ''Air pollution control council'' means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) ''Conditional rice straw burning permit'' means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) ''Allowable acres to be burned'' means the number of acres that may be burned pursuant to subdivision (c).

(5) ''Department'' means the Department of Food and Agriculture.

(6) ''Maximum fall burn acres'' means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) ''Maximum spring burn acres'' means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Year	Maximum Fall Burn Acres	Maximum Spring Burn Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:

(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

(k) ''Administrative burning'' means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(*l*) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or

product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, the advisory committee, and the Trade and Commerce Agency, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion goal, any recommended changes to this section, and other issues related to this section. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in subdivision (s) to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars ($50,000).

(o) The state board and the Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c). On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c).

(p) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(q) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(r) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(s) (1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars ($10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(t) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(u) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

SEC. 46.5. Section 41865 of the Health and Safety Code is amended to read:

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) ''Sacramento Valley Air Basin'' means the area designated by the state board pursuant to Section 39606.

(2) ''Air pollution control council'' means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) ''Conditional rice straw burning permit'' means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) ''Allowable acres to be burned'' means the number of acres that may be burned pursuant to subdivision (c).

(5) ''Department'' means the Department of Food and Agriculture.

(6) ''Maximum fall burn acres'' means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) ''Maximum spring burn acres'' means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Year	Maximum Fall Burn Acres	Maximum Spring Burn Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:

(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

(k) ''Administrative burning'' means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000

acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(*l*) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, the advisory committee, and the Trade and Commerce Agency, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion goal, any recommended changes to this section, and other issues related to this section. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in subdivision (s) to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the

department that the cost of the report and its updates shall not exceed fifty thousand dollars ($50,000).

(o) The state board and the Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c). On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c).

(p) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(q) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(r) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(s) (1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000), imprisonment in the

county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars ($10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(t) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(u) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

SEC. 47. Section 50887.5 of the Health and Safety Code is amended to read:

50887.5. The department is encouraged, as appropriate, to enter into interagency agreements with the Trade and Commerce Agency or any other state department or agency to ensure close coordination and cooperation in using the funds of the other departments or agencies for the jobs component, child care component, or other components of the housing developments.

SEC. 48. Section 124850 of the Health and Safety Code is amended to read:

124850. The department shall provide expert technical assistance to strategically located, high-risk rural hospitals to assist the hospitals in carrying out an assessment of potential business and diversification of service opportunities. In providing the technical assistance on business opportunities, the department shall consult with the Trade and Commerce Agency and other appropriate agencies. The high-risk rural hospital, in cooperation with the department, may develop a short-term plan of action if, in its opinion, the results of the assessment so indicate. The department, in consultation with an organization of interest, shall do all of the following:

(a) Establish a process for identifying strategically located, high-risk rural hospitals and reviewing requests from the hospitals for assistance.

(b) Develop a standard format for the strategic assessment.

(c) Develop a model action plan.

(d) Establish criteria for review of action plans.

(e) Request input and assistance from organizations of interest.

(f) Make the strategic assessment format and model action plan available to all small and rural hospitals.

SEC. 49. Section 10821.5 of the Insurance Code is amended to read:

10821.5. (a) The purchasing alliance shall furnish an annual financial audit to the commissioner on the forms provided by the commissioner. The annual financial audit may be filed either on a calendar year basis on or before March 31, or, if approved in writing by the commissioner in respect to any individual purchasing alliance, on a fiscal year basis on or before 90 days after the end of the fiscal year. The deadline for filing the annual audit may be extended by the commissioner for good cause, as determined by the commissioner for a period not to exceed 60 days. Failure to submit an audit on time, or within any extended time that the commissioner may grant, shall be grounds for an order by the commissioner to prohibiting the alliance from accepting any new business pursuant to this section. The audits shall be private, except that a synopsis of the balance sheet on a form prescribed by the commissioner may be made available to the public upon request. The audits shall be conducted and prepared in accordance with generally accepted auditing standards by an independent certified public accountant or independent licensed public accountant whose certification or license is in good standing at the time of the preparation. The fee for filing of the audit shall be three hundred thirteen dollars ($313). Any purchasing alliance that fails to file any audit or other report on or before the date it is due shall pay to the commissioner a penalty fee of one hundred eighteen dollars ($118) payable within 30 days of the due date of the audit and on failure to pay that fine or any fee or file the audit required by this section, shall forfeit the privilege of accepting new business until the delinquency is corrected. The commissioner may refuse to accept an audit or order a new audit for any of the following reasons:

(1) Adverse result in any proceeding before the California Board of Accountancy affecting the auditor's license.

(2) The auditor has an affiliation with the purchasing alliance or any of its officers or directors that could prevent his or her reports on the purchasing alliance from being reasonably objective.

(3) The auditor has been convicted of any misdemeanor or felony based on his or her activities as an accountant.

(4) Judgment adverse to the auditor in any civil action finding him or her guilty of fraud, deceit, or misrepresentation in the practice of his or her profession.

(b) Financial and performance audits or examinations of the purchasing alliance shall be conducted by the commissioner once every two years. The cost of the examinations or audits are to be paid by the purchasing alliance. The commissioner may impose conditions on registration, or continued registration to remedy compliance or performance problems.

(c) At any time the commissioner determines, after notice and hearing, that a purchasing alliance registered under this article has willfully failed to comply with any of the provisions of this section, the commissioner shall make his or her order prohibiting the purchasing alliance from conducting its business for a period not to exceed one year.

Any purchasing alliance violating an order made under this subdivision is subject to seizure under Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and may have its certificate of registration revoked by the commissioner. Any person aiding and abetting any purchasing alliance in violation of that order is guilty of a misdemeanor.

The purpose of this section is to maintain the solvency of the purchasing alliance subject to this article and to protect the public by preventing fraud and requiring fair dealing. The audit shall be designed to ensure that the purchasing alliance is not a risk-bearing entity, to ensure sound financial controls and money management, and to prevent mismanagement or misappropriation of funds either through neglect or malfeasance. In order to carry out those purposes the commissioner shall make reasonable rules and regulations to govern the conduct of the business of the purchasing alliance subject to this chapter.

(d) The commissioner shall establish fees for initial registration of a purchasing alliance and for renewal of registration of a purchasing alliance in an amount sufficient to cover the costs of administering this chapter. A purchasing alliance shall pay the initial registration fee at the time of application for registration, and the renewal fee at the time of application for renewal.

SEC. 50. Section 12389 of the Insurance Code is amended to read:

12389. (a) An underwritten title company as defined in Section 12340.5, which shall be a stock corporation, may engage in the business of preparing title searches, title reports, title examinations, certificates or abstracts of title, upon the basis of which a title insurer writes title policies, provided that:

(1) Only domestic corporations may be licensed under this section and no underwritten title company, as defined in Section 12340.5, shall

become licensed under this section, or change the name under which it is licensed or operates, unless it has first complied with Section 881.

(2) Depending upon the county or counties in which the company is licensed to transact business, it shall maintain required minimum net worth as follows:

Aggregate number of documents recorded and documents filed in the offices of the county recorders in the preceding calendar year in all counties where the company is licensed to transact business.	Amount of required minimum net worth
Less than 50,000	$ 75,000
50,000 to 100,000	120,000
100,000 to 500,000	200,000
500,000 to 1,000,000	300,000
1,000,000 or more	400,000

''Net worth'' is defined as the excess of assets over all liabilities and required reserves. It may carry as an asset the actual cost of its title plant provided the value ascribed to that asset shall not exceed the aggregate value of all other assets.

Where a title plant of an underwritten title company is not being currently maintained, the asset value of the plant shall not exceed its asset value as determined in the preceding paragraph as of the date to which that plant is currently maintained, less $^{1}/_{10}$th thereof for each succeeding year or part of the succeeding year that the plant is not being currently maintained. For the purposes of this section, a title plant shall be deemed currently maintained so long as it is used in the normal conduct of the business of title insurance, and (1) the owner of the plant continues regularly to obtain and index title record data to the plant or to a continuation thereof in a format other than that previously used, including, but not limited to, computerization of the data, or (2) the owner of the plant is a participant, in an arrangement for joint use of a title plant system regularly maintained in any format, provided the owner is contractually entitled to receive a copy of the title record data contained in the jointly used title plant system during the period of the owner's participation therein, either periodically or upon termination of that participation, at a cost not to exceed the actual cost of duplication of the title record data.

An underwritten title company at all times shall maintain current assets of at least ten thousand dollars ($10,000) in excess of its current liabilities, as current assets and liabilities may be defined pursuant to

regulations made by the commissioner. In making the regulations, the commissioner shall be guided by generally accepted accounting principles followed by certified public accountants in this state.

(3) An underwritten title company shall obtain from the commissioner a license to transact its business. The license shall not be granted until the applicant conforms to the requirements of this section and all other provisions of this code specifically applicable to applicant. After issuance the holder shall continue to comply with the requirements as to its business set forth in this code, in the applicable rules and regulations of the commissioner and in the laws of this state.

Any underwritten title company who possesses, or is required to possess, a license pursuant to this section shall be subject as if an insurer to the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1 of this code and shall be deemed to be subject to authorization by the Insurance Commissioner within the meaning of subdivision (e) of Section 25100 of the Corporations Code.

The license may be obtained by filing an application on a form prescribed by the commissioner accompanied by a filing fee of three hundred fifty-four dollars ($354). The license when issued shall be for an indefinite term and shall expire with the termination of the existence of the holder, subject to the annual renewal fee imposed under Sections 12415 and 12416.

An underwritten title company seeking to extend its license to an additional county shall pay a two hundred seven dollar ($207) fee for each additional county, and shall furnish to the commissioner evidence, at least sufficient to meet the minimum net worth requirements of paragraph (2), of its financial ability to expand its business operation to include the additional county or counties.

(4) (A) An underwritten title company shall furnish an audit to the commissioner on the forms provided by the commissioner annually, either on a calendar year basis on or before March 31st or, if approved in writing by the commissioner in respect to any individual company, on a fiscal year basis on or before 90 days after the end of the fiscal year. The time for furnishing any audit required by this paragraph may be extended, for good cause shown, on written approval of the commissioner for a period, not to exceed 60 days. Failure to submit an audit on time, or within the extended time that the commissioner may grant, shall be grounds for an order by the commissioner to accept no new business pursuant to subdivision (d). The audits shall be private, except that a synopsis of the balance sheet on a form prescribed by the commissioner may be made available to the public.

(B) The audits shall be made in accordance with generally accepted auditing standards by an independent certified public accountant or independent licensed public accountant whose certification or license is

in good standing at the time of the preparation. The fee for filing the audit shall be three hundred thirteen dollars ($313).

(C) The commissioner may refuse to accept an audit or order a new audit for any of the following reasons:

(i) Adverse result in any proceeding before the California Board of Accountancy affecting the auditor's license.

(ii) The auditor has an affiliation with the underwritten title company or any of its officers or directors that would prevent his or her reports on the company from being reasonably objective.

(iii) The auditor has suffered conviction of any misdemeanor or felony based on his or her activities as an accountant.

(iv) Judgment adverse to the auditor in any civil action finding him or her guilty of fraud, deceit, or misrepresentation in the practice of his or her profession.

Any company that fails to file any audit or other report on or before the date it is due shall pay to the commissioner a penalty fee of one hundred eighteen dollars ($118) and on failure to pay that or any other fee or file the audit required by this section shall forfeit the privilege of accepting new business until the delinquency is corrected.

(b) An underwritten title company may engage in the escrow business and act as escrow agent provided that:

(1) It shall maintain record of all receipts and disbursements of escrow funds.

(2) It shall deposit seven thousand five hundred dollars ($7,500) for each county in which it transacts business in some form permitted by Section 12351 with the commissioner who shall immediately make a special deposit of that amount in the State Treasury and that deposit shall be subject to Sections 12353, 12356, 12357, and 12358 and as long as there are no claims against the deposit all interest and dividends thereon shall be paid to the depositor. The deposit shall be for the security and protection of persons having lawful claims against the depositor growing out of escrow transactions with it. The deposit shall be maintained until four years after all escrows handled by the depositor have been closed.

(A) The commissioner may release the deposits prior to the passage of the four-year period upon presentation of evidence satisfactory to the commissioner of either a statutory merger of the depositor into a licensee or certificate holder subject to the jurisdiction of the commissioner, or a valid assumption agreement under which all liability of the depositor stemming from escrow transactions handled by it is assumed by a licensee or certificate holder subject to the jurisdiction of the commissioner.

(B) With the foregoing exceptions, the deposit shall be returned to the depositor or lawful successor in interest following the four-year period,

upon presentation of evidence satisfactory to the commissioner that there are no claims against the deposit stemming from escrow transactions handled by the depositor. If the commissioner has evidence of one or more claims against the depositor, and the depositor is not in conservatorship or liquidation, the commissioner may interplead the deposit by special endorsement to a court of competent jurisdiction for distribution on the basis that claims against the depositor stemming from escrow transactions handled by it have priority in the distribution over other claims against the depositor.

(c) The commissioner shall, whenever it appears necessary, examine the business and affairs of a company licensed under this section. All of these examinations shall be at the expense of the company.

(d) At any time that the commissioner determines, after notice and hearing, that a company licensed under this section has willfully failed to comply with any of the provisions of this section, the commissioner shall make his or her order prohibiting the company from conducting its business for a period of not more than one year.

Any company violating the commissioner's order is subject to seizure under Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and may have its license revoked by the commissioner. Any person aiding and abetting any company in a violation of the commissioner's order is guilty of a misdemeanor.

The purpose of this section is to maintain the solvency of the companies subject to this section and to protect the public by preventing fraud and requiring fair dealing. In order to carry out these purposes, the commissioner may make reasonable rules and regulations to govern the conduct of its business of companies subject to this section.

The name under which each underwritten title company is licensed shall at all times be an approved name. The fee for filing an application for a change of name shall be one hundred eighteen dollars ($118). Each such company shall be subject to the provisions of Article 14 (commencing with Section 1010) and Article 14.5 (commencing with Section 1065.1) of Chapter 1 of Part 2 of Division 1.

The rules and regulations shall be adopted, amended or repealed in accordance with the procedure provided in Chapter 3.5 (commencing with Section 11350) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 51. Section 25696 of the Public Resources Code is amended to read:

25696. The commission, in cooperation with the California State World Trade Commission and the Trade and Commerce Agency, may assist California-based energy technology and energy conservation

firms to export their technologies, products, and services to international markets.

The commission may, in coordination with the California State World Trade Commission, do all of the following:

(a) Conduct a technical assistance program to help California energy companies improve export opportunities and enhance foreign buyers' awareness of and access to energy technologies and services offered by California-based companies. Technical assistance activities may include, but are not limited to, an energy technology export information clearinghouse, a referral service, a trade lead service consulting services for financing, market evaluation, and legal counseling, and information seminars.

(b) Perform research studies and solicit technical advice to identify international market opportunities.

(c) Assist California energy companies to evaluate project or site-specific energy needs of international markets.

(d) Assist California energy companies to identify and address international trade barriers restricting energy technology exports, including unfair trade practices and discriminatory trade laws.

(e) Develop promotional materials in conjunction with California energy companies to expand energy technology exports.

(f) Establish technical exchange programs to increase foreign buyers' awareness of suitable energy technology uses.

(g) Prepare equipment performance information to enhance potential export opportunities.

(h) Coordinate activities with state, federal, and international donor agencies to take advantage of trade promotion and financial assistance efforts offered.

SEC. 52. Section 31306 of the Public Resources Code is amended to read:

31306. (a) The conservancy shall propose capital projects and capital programs, generated by the conservancy, local public agencies, or state agencies for grants available under Section 306A of the federal Coastal Zone Management Improvement Act (Public Law 96-464). The commission shall forward the proposed projects and programs to the Trade and Commerce Agency as applications recommended for funding under Section 306A. The commission shall not forward any application unless it has been proposed by the conservancy.

(b) Nothing in this chapter shall diminish the commission's authority pursuant to Section 30330 of the Public Resources Code, which shall include determination of the allocation of federal financial assistance among the coastal management activities, coastal research activities, coastal energy impact activities, living marine resource activities, and natural resources enhancement and management activities, eligible for

federal financial assistance under the Coastal Zone Management Improvement Act, or any amendment thereto, or any other federal act enacted up to this time or in the future, that relates to the planning and management of the coastal zone, except as provided in this section.

(c) (1) Prior to the commission's determination of allocations under subdivision (b), the commission and the conservancy shall concur on the allocation for capital projects and capital programs generated by the conservancy, local public agencies, or state agencies for public access, agricultural preservation, enhancement of coastal resources, coastal restoration, urban waterfront restoration, reservation of significant coastal resource areas, and commercial fishing facilities. No allocation for these capital projects and capital programs shall be made unless they are proposed by the conservancy.

(2) Prior to the commission's determination of allocations under subdivision (b), the commission and the San Francisco Bay Conservation and Development Commission shall concur on the allocation for the San Francisco Bay Conservation and Development Commission to carry out its responsibilities under the federally approved California Coastal Management Program.

(3) In determining the allocations under subdivision (b), the commission shall consult with the conservancy, the San Francisco Bay Conservation and Development Commission, and the Department of Finance, and shall ensure that agencies eligible for federal financial assistance under the Coastal Zone Management Improvement Act are allocated sufficient assistance to carry out their required responsibilities under the federally approved California Coastal Management Program.

SEC. 53. Section 42021 of the Public Resources Code is amended to read:

42021. Nothing in this chapter prohibits an applicant from seeking designation of an enterprise zone by the Trade and Commerce Agency and receiving economic incentives as defined in Section 7073 of the Government Code.

SEC. 54. Section 42022 of the Public Resources Code is amended to read:

42022. In evaluating an application for designation of a recycling market development zone, the board shall consult with the Trade and Commerce Agency.

SEC. 55. Section 10525 of the Unemployment Insurance Code is amended to read:

10525. The coordination and special services plan shall also include a dislocated workers assistance plan to provide services to eligible workers pursuant to Chapter 7.5 (commencing with Section 15075) of Division 8. The dislocated workers assistance plan shall meet the

requirements of Title III of the federal Job Training Partnership Act (Public Law 97-300), as amended, and include all of the following:

(a) The specific responsibilities of each of the state agencies administering dislocated workers assistance programs.

(b) Procedures for the exchange of information and coordination between the Employment Development Department and the Trade and Commerce Agency for the purpose of developing strategies to avert plant closings or mass layoffs and to accelerate the reemployment of affected individuals.

(c) Provide that services to a substantial number of members of a labor organization shall be established only after full consultation with the labor organization.

(d) Prescribe program standards, including, but not limited to, standards based on job placement and job retention.

(e) Integration of displaced worker services with services and payments made available under the federal Trade Act of 1974, as amended (19 U.S.C. Sec. 2101 and following), unemployment insurance benefits, the Job Service, vocational education programs, and other programs provided under this division.

(f) Coordination of local dislocated worker rapid response assistance planning with the federal Worker Adjustment and Retraining Notification Act, Public Law 100-379, by designation of local service delivery area grant administrators as local governmental entities that will also formally receive the 60-day notice required under the federal act.

SEC. 56. Section 12112 of the Unemployment Insurance Code is amended to read:

12112. A procedure for applying for grants shall be developed by a panel consisting of the Directors of the Employment Development Department, the Department of Industrial Relations, and the Trade and Commerce Agency, who shall also make the final decision on the awarding of grants.

SEC. 57. Section 12151 of the Unemployment Insurance Code is amended to read:

12151. It is the intent of the Legislature that the Employment Development Department, with the assistance of the Department of Industrial Relations and the Trade and Commerce Agency, seek and apply for funds from the federal government and other potential sources to implement the program established under this division.

SEC. 58. Section 15076 of the Unemployment Insurance Code is amended to read:

15076. The private industry councils in each service delivery area shall recommend and approve an employment and training plan for displaced workers, which shall meet the requirements of the federal Job

Training Partnership Act, and in addition provide for each of the following:

(a) Identification, in conjunction with the Employment Development Department, of individuals eligible for assistance due to any of the following facts:

(1) The individuals have been terminated or laid off or have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation.

(2) The individuals have been terminated from employment, or have received a notice of termination of employment, as a result of any permanent closure of, or substantial layoff at, a plant, facility, or enterprise.

(3) The individuals are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which they reside, including older individuals who have had substantial barriers to employment by reason of age.

(4) The individuals were self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters.

(5) The individuals are displaced homemakers who may be provided services as additional dislocated workers without adversely affecting the delivery of services to eligible dislocated workers.

(b) Determination of job opportunities that exist within the local labor market area or outside the labor market area for which displaced workers could be retrained, and determination of what training for identified employment opportunities exists or could be provided within the local area. This determination shall be undertaken by use of both of the following:

(1) The State-Local Cooperative Labor Market Information Program established in Section 15074.

(2) As appropriate, representatives of the Employment Training Panel in accordance with its functions pursuant to Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3, and representatives of the Trade and Commerce Agency as provided in Article 3.5 (commencing with Section 15340) of Chapter 1 of Part 6.7 of Division 3 of the Government Code.

(c) Informing eligible displaced workers of training opportunities. This process shall be undertaken in conjunction with the Employment Development Department.

(d) A program for dislocated workers assistance drawing, as appropriate, upon existing facilities and resources, which may include, but not be limited to, all of the following:

(1) Dislocated worker employment services and related assistance, provided that employment-related services are coordinated with, and do not duplicate, those available and accessible services of the Employment Development Department, including all of the following:

(A) Job search assistance.

(B) Job development.

(C) Support services, such as financial and personal counseling, child care and related children's services, and assistance in obtaining equipment and supplies necessary for retraining or new employment.

(D) Relocation assistance, if it is determined that an eligible individual cannot obtain employment in the commuting area and has secured suitable long duration employment or a bona fide job offer.

(E) Prelayoff assistance.

(F) Programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

(2) Training in job skills for which demand exceeds supply, including, where feasible, job training administered by the Employment Training Panel pursuant to Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(3) Commuting assistance, consistent with the Displaced Worker Transportation Program established pursuant to Section 14002.5 of the Government Code.

(e) Consultation with affected labor organizations, in the case of any assistance program that will provide services to a substantial number of members of these labor organizations.

(f) Involvement of displaced workers in program delivery, including, as appropriate, paid employment for these individuals in providing services under the program.

(g) Utilization of services and resources from other sources, public and private, and specific procedures for coordination with other programs, in order to maximize services for displaced workers and their families and increase employment and training opportunities. Examples of programs to be included are the following:

(1) Other employment and training and education programs.

(2) Social services, including child care and related children's services.

(3) Housing programs, including low-income weatherization and home energy conservation programs.

(4) Transportation related programs, including highway, bridge, and mass transit construction and repair.

(5) Other programs related to infrastructure development and repair.

(6) Economic development programs deemed applicable.

(h) Contracting with the Employment Development Department in order to provide funding for special services the department is to provide under the local displaced worker assistance program.

(i) Coordination with neighboring jurisdictions, in cases of plant closings or mass layoffs that cross service delivery areas.

(j) A system of program and fiscal accountability to ensure maximum benefit from the expenditure of federal and state funds and that is consistent with procedures established in the state's job training plan pursuant to Section 121 of the federal Job Training Partnership Act (Public Law 93-700), as amended, including all of the following:

(1) Performance goals and standards, established by the State Job Training Coordinating Council, including standards for both of the following:

(A) Placement and retention in unsubsidized employment.

(B) Earnings and wages.

(2) Procedures for reporting on the outcome of the program, which include all of the following:

(A) A description of activities conducted.

(B) Characteristics of participants.

(C) The extent to which the activities conducted achieved relevant performance goals.

(3) Fiscal control, accounting, audit, and related provisions.

(k) Identification of the administrative entity of the local service delivery area or consortium that shall also receive the 60-day notification required to be given to units of local government pursuant to the federal Worker Adjustment and Retraining Notification Act (Public Law 100-379).

(*l*) Integration of services and benefits available under Chapter 2 of Title II of the federal Trade Act of 1974 (19 U.S.C. Sec. 2101 and following) and Article 1.5 (commencing with Section 1266) of Chapter 5 of Part 1 of Division 1.

The plan shall be reviewed and approved according to Sections 15045 and 15046.

SEC. 59. Section 15076.5 of the Unemployment Insurance Code is amended to read:

15076.5. The State Job Training Coordinating Council shall do all of the following:

(a) Be the lead state agency to establish policies for:

(1) Alleviating adverse conditions that might cause plant closures and, where closures are unavoidable, assisting local efforts to secure alternative employment and retraining opportunities for displaced workers.

(2) Marshaling available state and federal resources to aid workers and communities affected by major plant closures and to foster long-term economic vitality, industrial growth, and job opportunities.

(3) Integrating appropriate activities of the Trade and Commerce Agency, the Employment Development Department, the Employment Training Panel, the Department of Industrial Relations, the State Department of Education, the Chancellor's Office of the California Community Colleges, and the Governor's Office of Planning and Research with the State Dislocated Worker Unit.

(4) Collection of data and preparation of economic analyses and reporting, intended to provide better and more detailed assessments of future trends within the industrial, commercial, and agricultural sectors of the economy.

(b) Review and comment on the plans for displaced worker assistance programs submitted pursuant to Section 15076.

(c) Recommend to the Governor necessary components of state plans under the jurisdiction of other state offices, departments, or agencies that administer programs appropriate for coordination with dislocated worker assistance programs authorized by this chapter.

(d) Review and make recommendations to the Governor and the Legislature regarding changes needed in current federal and state statutes and programs in order to minimize adverse consequences of plant closures and promote rapid reemployment of workers and revitalization of communities.

SEC. 60. Section 15077 of the Unemployment Insurance Code is amended to read:

15077. The Employment Development Department shall do all of the following:

(a) Review and approve the plans for displaced workers' assistance submitted pursuant to Section 15076.

(b) According to policies established by the State Job Training Coordinating Council and state law, coordinate displaced workers assistance efforts in situations where plant closures or layoffs within an industry have a significant statewide impact.

(c) Encourage and coordinate early identification of situations of potential plant closures, and provide any assistance that may be necessary to alleviate economic dislocation.

(d) Provide assistance to the Trade and Commerce Agency in active recruitment of replacement industries or establishments.

(e) Cooperate with the Employment Training Panel in the coordination of training and services for displaced workers eligible under Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(f) Serve as the state agency providing any information and procedural activities that may be required by the federal government to ensure federal funding for dislocated workers assistance.

(g) Provide for the submission of applications to the United States Secretary of Labor for additional federal funding to the state in accordance with Title III of the federal Job Training Partnership Act (Public Law 93-700), as amended.

(h) Operate a monitoring, reporting, and management system that provides an adequate information base for effective program planning, management, review, and evaluation.

(i) Administer federal and state funds appropriated for the support of demonstration and special assistance programs for dislocated workers.

(j) Provide specific periodic notification to employers of 100 or more employees of their potential responsibilities under the federal Worker Adjustment and Retraining Notification Act (P.L. 100-379), the availability of services to employees and employers under this and other state laws, and instructions on how to comply with those laws and obtain appropriate services.

SEC. 61. Section 2.5 of this bill incorporates amendments to Section 149 of the Business and Professions Code proposed by both this bill and SB 1863. 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 149 of the Business and Professions Code, and (3) this bill is enacted after SB 1863, in which case Section 149 of the Business and Professions Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 1863, at which time Section 2.5 of this bill shall become operative.

SEC. 62. Section 15.5 of this bill incorporates amendments to Section 84040 of the Education Code proposed by both this bill and AB 2388. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 84040 of the Education Code, and (3) this bill is enacted after AB 2388, in which case Section 84040 of the Education Code, as amended by Section 15 of this bill, shall remain operative only until the operative date of AB 2388, at which time Section 15.5 of this bill shall become operative.

SEC. 63. Section 46.5 of this bill incorporates amendments to Section 41865 of the Health and Safety Code proposed by both this bill and AB 2939. 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 41865 of the Health and Safety Code, and (3) this bill is enacted after AB 2939, in which case Section 41865 of the Health and Safety Code, as amended by Section 46

of this bill, shall remain operative only until the operative date of AB 2939, at which time Section 46.5 of this bill shall become operative.

SEC. 64. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the protection of consumers, to promote the health and safety of the public, and to promote the efficiency of state government it is necessary that this act go into immediate effect.

CHAPTER 1056

An act to amend Sections 15310, 15311, 15313, 15325, and 15363.6 of, to add Sections 15310.1, 15329, 15333.10, and 15333.11 to, and to add Article 3.9 (commencing with Section 15348) to Chapter 1 of Part 6.7 of Division 3 of Title 2 of, the Government Code, and to add Section 22553.2 to, and to repeal Section 22002.5 of, the Public Utilities Code, relating to technology.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 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 is the world's leader in advancing cutting-edge science and technology and in creating new technology enterprises, but the infrastructure that helped achieve this status will not be adequate for future growth.

(b) A recent study by the California Council on Science and Technology found that there is a need for increased partnerships between industry, academia, and government in order to expand the state's research base upon which industry relies.

(c) The same study also found that state government science and technology research and applied application programs are uncoordinated and not leveraged together to provide services to industry in a flexible, agile, and targeted way and called for a more strategic focus of state research and development programs and tax incentives.

(d) Private foundation funding is very important to basic and applied research. The state has not developed a way to help top researchers position themselves to receive these funds.

(e) The amount of state research and development funding is not tracked or coordinated in a way that increases the state's technology competitive advantage.

(f) Although California is the world leader in venture capital investments, there is a need to develop other early-stage funding methods for selected technology areas and small startup companies.

(g) The California Research Bureau, in its profile of California computer and Internet users, has found that there is, indeed, a significant ''digital divide'' between various groups within the state based on income, educational level, age, race, and ethnicity. This digital divide is isolating those without computer equipment and skills from participation in the new global economy. The report also found that the Hispanic community, while being one of the fastest growing groups in California, is lagging behind other groups.

SEC. 2. It is the intent of the Legislature in enacting this act to provide for all of the following:

(a) Establishment of a position for a high-level, high-visibility state official responsible for overall development and articulation of state policies and programs that support ''new technology'' as the underpinning of California's economic growth.

(b) Addressing the ''digital divide'' issue by encouraging broader access to technology and more equity in sharing in the benefits of technology for all Californians.

(c) Coordination of disparate high-technology programs throughout state government.

(d) Creation of financial incentives for private sector participation in access to technology and technology programs.

(e) Maximization of participation of California industries and universities in federal research and development activities, including accessing grant programs.

(f) Implementation of a strategic planning process within state government that will ensure that research and development funding allocation decisions are based on economic considerations.

(g) State leadership to encourage industry to continue and expand support of university-based research and development.

(h) Development of plans and programs for improving access to capital for technology-based entrepreneurs.

SEC. 3. Section 15310 of the Government Code is amended to read:

15310. The following definitions shall apply to this part:

(a) ''Agency'' means the Technology, Trade, and Commerce Agency.

(b) ''Secretary'' means the Secretary of Technology, Trade, and Commerce.

SEC. 4. Section 15310.1 is added to the Government Code, to read:

15310.1. Whenever the term ''Trade and Commerce Agency'' appears in any law, it means the ''Technology, Trade, and Commerce Agency,'' and whenever the term ''Secretary of the Trade and Commerce Agency'' appears in any law, it means the ''Secretary of Technology, Trade, and Commerce.''

SEC. 5. Section 15311 of the Government Code is amended to read:

15311. The Technology, Trade, and Commerce Agency is administered by the Secretary of Technology, Trade, and Commerce who shall be appointed by the Governor with the advice and consent of the Senate, and who shall be paid a salary at the amount prescribed under Section 11550.

SEC. 6. Section 15313 of the Government Code is amended to read:

15313. It is the intent of the Legislature in enacting this chapter that the duties of the Business, Transportation and Housing Agency regarding the California State World Trade Commission, the Department of Commerce, and the Trade and Commerce Agency be transferred to the Technology, Trade, and Commerce Agency. Any reference in this code to duties of the Business, Transportation and Housing Agency with regard to the department, office, or Trade and Commerce Agency shall be deemed to mean the Technology, Trade, and Commerce Agency.

SEC. 7. Section 15325 of the Government Code is amended to read:

15325. The work of the agency shall be divided into at least the following:

(a) The Office of Economic Research.

(b) The Office of Local Development.

(c) The Office of Business Development.

(d) The Office of Tourism.

(e) The Office of Small Business.

(f) The Film Office.

(g) The Office of Marketing and Communications.

(h) The Office of Strategic Technology.

(i) The Office of Foreign Investment.

(j) The California State World Trade Commission, including international trade and investment offices, the Office of Export Development, and the Export Finance Office.

(k) California Field Offices.

(*l*) The Office of Trade Policy and Research.

(m) The Office of Permit Assistance.

(n) The Office of California-Mexico Affairs.

(o) The Office of Military Base Retention.

(p) The Division of Science, Technology, and Innovation.

SEC. 8. Section 15329 is added to the Government Code, to read:

15329. (a) There is hereby established within the Technology, Trade, and Commerce Agency the Division of Science, Technology, and Innovation. The Division of Science, Technology, and Innovation shall be under the supervision of a Deputy Secretary of Science, Technology, and Innovation who shall be appointed by, and serve at the pleasure of, the Governor.

(b) The deputy secretary's duties shall include, but not be limited to, all of the following:

(1) Oversight of the Division of Science, Technology, and Innovation.

(2) Responsibility for identifying science and technology trends, including, but not limited to, information technology, telecommunications, and e-commerce, that are significant to the state, particularly for small businesses, and, in consultation with the Small Business Competitiveness Council, developing a state strategy to address them. This shall be coordinated with the California Economic Strategy Panel.

(3) Working closely with industry, academia, and government to encourage technology research, development, transfer, and applications to particularly meet the needs of small businesses.

(4) Working closely with the federal government to maximize participation of state industries, small businesses, national laboratories, and universities in technology research, and in obtaining research and development funding.

(5) Working closely with private foundations to maximize participation of state industries, small businesses, national laboratories, and universities, including the University of California, the California State University, and private universities, in technology research and engineering, and in obtaining research and development funding.

(6) In consultation with the California Research and Funding Council, evaluating proposals for, and making recommendations on, the coordination, consolidation, or relocation of research and development programs throughout state government.

(7) Developing plans and implementing programs for improving access to early-stage capital investment, particularly for technology-based small businesses in the state.

(8) Coordinating state science and technology policies and programs.

(9) Participating in the development and management of the Small Business Development Center program.

(10) Developing and administering grant and matching grant programs that provide funding to appropriate public and private entities for increased access to digital technology for all citizens of the state.

(c) Notwithstanding any other provision of law, the Division of Science, Technology, and Innovation shall administer all programs

established pursuant to Section 15333.2, the California Space and Technology Alliance established pursuant to Section 15333.3, the Highway to Space Program established pursuant to Section 15333.4, the Office of Strategic Technology established pursuant to Section 15333.5, the Competitive Technology Advisory Committee established pursuant to former Section 15333.6, the California Research and Funding Council established pursuant to Section 15333.10, the Small Business Competitiveness Council established pursuant to Section 15333.11, the Regional Technology Alliances established pursuant to Section 15379.2, the Challenge Grant Program established pursuant to Section 15379.3, the Technology Planning Program established pursuant to Section 15379.14, and the Manufacturing Technology Program established pursuant to Section 15379.15.

(d) For purposes of this section, the following definitions shall apply:

(1) ''Information technology'' includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

(2) ''Technology'' includes, but is not limited to, the application of science and engineering to research and development, especially for industrial or commercial objectives, in sectors that include telecommunications, information technologies, electronics, biochemistry, medicine, agriculture, transportation, space, and aerospace.

SEC. 9. Section 15333.6 of the Government Code is repealed.

SEC. 10. Section 15333.10 is added to the Government Code, to read:

15333.10. The California Research and Development Council is hereby established in the Division of Science, Technology, and Innovation to advise the deputy secretary on the role that government is playing in supporting California research and development activities, the role of research and development tax incentives, and related incentives, and to make recommendations on how government funding can be effectively coordinated, and used to leverage California's research and development competitiveness.

SEC. 11. Section 15333.11 is added to the Government Code, to read:

15333.11. The Small Business Competitiveness Council is established in the Division of Science, Technology, and Innovation to advise the deputy secretary on how technology can improve the competitive advantage of small businesses and manufacturers by

identifying industry driven vocational education, training, and technical assistance priorities, and developing a collaborative strategy with higher education and manufacturing technology centers, small business development centers, community college applied technology centers, trade centers, and other services to meet these needs, and a means to determine if the priorities are being met by the respective programs.

SEC. 12. Article 3.9 (commencing with Section 15348) is added to Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 3.9. Designation of Spaceports

15348. For purposes of this article, the following definitions apply:

(a) ''Agency'' means the Technology, Trade, and Commerce Agency.

(b) ''Authority'' means the California Spaceport Authority.

(c) ''Date of designation'' means the date that the spaceport receives designation by the authority pursuant to Section 15348.5.

(d) ''Governing body'' means the governing body of a city, county, city and county, special district, or joint powers authority, as appropriate.

(e) ''Launch'' means to place or attempt to place a launch vehicle into a ballistic, suborbital, or orbital trajectory, into Earth orbit in outer space, or otherwise into outer space. It is also a means of placing a commercial, civil, or military payload into Earth orbit or beyond. It includes all activities involved in the preparation of a launch vehicle for flight, including all processing, servicing, and support activities that take place at a launch site or at a California mission control support site for ocean launches. A ''launch'' begins with the arrival of the launch vehicle or payload at the launch site.

(f) ''Launch site'' means a location from which a space launch or operation directly associated with a space launch takes place, a location at which a launch vehicle or its payload, if any, is intended to land, or as defined in the Commercial Space Launch Act (49 U.S.C.A. Sec. 70101 and following). The site includes any right-of-way directly associated with the space launch or reentry operations and all facilities and support infrastructure related to launch, reentry, or payload processing.

(g) ''Launch vehicle'' means a vehicle specifically designed and built to operate in or place a payload in the upper atmosphere or outer space. ''Launch vehicles'' include, but are not limited to, expendable space launch vehicles and reusable launch vehicles.

(h) ''Operation of a launch site'' means the conduct of approved safety operations at a launch site to support the launching of vehicles and payloads.

(i) ''Operation of a reentry site'' means the conduct of safety operations at a fixed site on Earth at which a reentry vehicle and its payload, if any, is intended to land.

(j) ''Payload'' means an object, including, but not limited to, a satellite that a licensed launch site undertakes to place into outer space by means of a launch vehicle, including components of the vehicle specifically designed or adopted to support that activity.

(k) ''Person'' means any individual and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any state or nation.

(*l*) ''Reentry'' means the return of any launch vehicle that has been placed in a ballistic, suborbital, or orbital trajectory, and its payload, if any, to the Earth. ''Reentry'' includes all activities involved in the postflight ground operations. A ''reentry'' ends when a launch vehicle or payload, if any, has completed its descent to Earth and is retrieved.

(m) ''Reentry site'' means the location on Earth at which a reentry is intended to occur, as defined in a license issued or transferred by the United States Secretary of Transportation, and any necessary support infrastructure related to reentry or payload recovery.

(n) ''Reusable launch vehicle'' means a vehicle that is designed to launch into an orbital or suborbital trajectory, into Earth orbit in outer space, or otherwise into outer space, that returns to Earth and is reused for a subsequent future launch.

(o) ''Spaceport'' means an entity that has been designated pursuant to Section 15348.5.

15348.5. (a) The California Spaceport Authority shall designate spaceports for the operation of launch sites, as defined in subdivision (f) of Section 15348, or reentry sites, as defined in subdivision (m) of that section.

(b) Any city, county, city and county, special district, joint powers authority, or private entity, as appropriate, may apply to the authority for designation as a spaceport.

(c) (1) The application described in subdivision (b) shall require at least the following information to be submitted to the authority:

(A) A written notice of intent to apply for a federal launch site operator's license from the United States Secretary of Transportation under the authority of the Commercial Space Launch Act (49 U.S.C.A. Sec. 70101 and following), to be received by the authority no later than 60 days prior to the submission of the application to the United States Secretary of Transportation.

(B) A copy of the perfected application submitted to the United States Secretary of Transportation for a federal launch site operator's license.

(C) A written notice of acceptance or denial by the United States Secretary of Transportation for a federal launch site operator's license.

If acceptance is granted, a copy of the license shall be included in the written notice.

(2) This subdivision shall not apply to any launch site operator who is federally licensed on or before January 1, 2001.

(d) The authority shall withdraw spaceport designation upon receipt of notice from the Federal Aviation Administration that the launch site operator of the spaceport no longer meets safety requirements or that safety deficiencies in the spaceport have remained uncorrected for a reasonable period of time after being identified.

SEC. 13. Section 15363.6 of the Government Code is amended to read:

15363.6. The secretary shall have the following responsibilities:

(a) Coordinating the various trade, investment, and tourism activities of the Technology, Trade, and Commerce Agency to ensure that the resources that the state has invested in these programs are used effectively and efficiently and that they foster the state's reputation as a source of high quality, cost-effective goods and services including tourism destinations.

(b) Coordinating, on behalf of the Governor, the use of the overseas trade offices by any state export program not under the California State World Trade Commission, such as those that are operated by the Department of Food and Agriculture and the California Energy Commission, and by any state agency which may have occasion to need the services of the overseas trade offices in carrying out that agency's official duties and responsibilities.

(c) Reporting to the Governor and the Legislature on an annual basis about the policies, plans, budgeting, and accomplishments of the agency and its programs.

(d) In his or her capacity as a member of the Governor's cabinet, coordinating the development of a state policy on economic development and trade, and advising the Governor and members of the cabinet of the potential impacts of regulations on the state's business, economy, and job base. The initial policy and implementation strategy shall be included as a part of the secretary's first annual report to the Governor and the Legislature following enactment of this chapter. Each year thereafter, the secretary's annual report shall discuss economic development and trade policies including accomplishments and needed modifications.

(e) Evaluating, at his or her discretion, the findings and determinations required of any state agency which proposes to adopt regulations under Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1, including economic and cost impacts, reporting requirements, and alternatives analyses. The secretary shall, during the written comment period specified pursuant to paragraph (9) of

subdivision (a) of Section 11346.5, submit written comments into the record of the agency which proposes to adopt those regulations in those instances when the secretary determines that the contents of the notice of the proposed action or the supporting analysis and initial statement of reasons do not sufficiently support the findings and determinations of the agency. The secretary may, at his or her discretion, comment on other aspects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative effects of the proposed action that significantly impact the state's business, industry, economy, or job base, including the cumulative impacts of the proposed action considered along with regulatory requirements in place at the federal, state, and local levels.

(f) Identifying science and technology trends that are significant to the state and developing a state strategy to address them.

(g) Developing a state strategy for applying and commercializing technology to create jobs, respond to industry changes, and foster innovation and competitiveness.

(h) Coordinating state science and technology policies and programs.

(i) Consulting frequently with the California Council on Science and Technology. The secretary may, as deemed appropriate and necessary, request specific studies and reports from the council.

SEC. 14. Section 22002.5 of the Public Utilities Code, as added by Chapter 191 of the Statutes of 2000, is repealed.

SEC. 15. Section 22553.2 is added to the Public Utilities Code, to read:

22553.2. No district may exercise any of the authority granted under this part for the development of spaceports unless it has been designated as a spaceport pursuant to Section 15348.5 of the Government Code.

CHAPTER 1057

An act to amend Sections 8378.3, 8494, 54742, 54745, 54746, 54747, 54749, and 54749.5 of the Education Code, relating to education.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 8278.3 of the Education Code is amended to read:

8278.3. (a) (1) The Child Care Facilities Revolving Fund is hereby established in the State Treasury to provide funding for the purchase of

new relocatable child care facilities for lease to school districts and contracting agencies that provide child care and development services, pursuant to this chapter. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities into this fund for allocation to school districts and contracting agencies, as specified, for the purchase, transportation, and installation of facilities for replacement and expansion of capacity. School districts and contracting agencies using facilities made available by the use of these funds shall be charged a leasing fee, either at a fair market value for those facilities or at an amount sufficient to amortize the cost of purchase and relocation, whichever is lower, over a 10-year period. Upon full repayment of the purchase and relocation costs, title shall transfer from the State of California to the school district or contracting agency. The Superintendent of Public Instruction shall deposit all revenue derived from the lease payments into the Child Care Facilities Revolving Fund.

(2) Notwithstanding Section 13340 of the Government Code, all moneys in the fund, including moneys deposited from lease payments, shall be continuously appropriated, without regard to fiscal year, to the Superintendent of Public Instruction for expenditure pursuant to this article.

(b) On or before November 1, 1997, the Superintendent of Public Instruction shall submit a plan to the Governor's Office of Child Development and Education, the Department of Finance, and the Legislative Analyst's office. This plan shall specify the application procedures, the allowable uses of the funds, and the form of the agreement, including, but not necessarily limited to, provisions to protect the state's interest, including provisions relating to maintenance and the event of contract termination.

(c) On or before August 1, 1998, and on or before August 1 of each fiscal year thereafter, the Superintendent of Public Instruction shall submit to the Governor's Office of Child Development and Education, the Department of Finance, and the Legislative Analyst's office a report detailing the number of funding requests received, the types of agencies which received this facilities funding, the increased capacity that these facilities generated, a description of how the facilities are being used, and a projection of the lease payments collected and the funds available for future use.

(d) School districts and county offices of education that operate a Cal-SAFE program pursuant to Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29 are eligible to apply for and receive funding pursuant to this section.

SEC. 2. Section 8494 of the Education Code is amended to read:

8494. (a) All of the following child care and development programs, other than those providing extended day care services, shall

be eligible to receive a loan for the renovation and repair of facilities used for the program or to lease relocatable facilities to be used for the program:

(1) Private nonprofit child care and development programs currently, or soon to be, under contract with the State Department of Education pursuant to Section 8262.

(2) Child care and development programs conducted pursuant to Article 4 (commencing with Section 8225).

(3) Child care and development programs operated by, or in a facility owned by, a public entity.

(4) Child care and development programs conducted pursuant to Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29.

(b) A recipient of a loan pursuant to this section shall document that the renovated facility shall comply with all laws and regulations applicable to child care facilities provided for pursuant to Chapter 3.4 (commencing with Section 1596.70) and Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code.

(c) A recipient of a loan pursuant to this section shall assure the board that the renovated facility shall be used for the purposes of the child care and development program for the entire loan period, which shall be determined by the board as follows:

(1) For loans equal to or less than thirty thousand dollars ($30,000), not less than three years.

(2) For loans exceeding thirty thousand dollars ($30,000), the loan period shall increase one year for each additional ten thousand dollars ($10,000) or part thereof, to a maximum of fifty thousand dollars ($50,000).

(d) Interest on the loan principal shall be charged at a rate equal to the average of the interest rate applied to the last three bond sales pursuant to Chapter 21.6 (commencing with Section 17695) of Part 10.

(e) In the event that a recipient ceases to use the renovated facility for purposes of the child care and development program prior to the expiration of the loan period, the board shall collect the entire outstanding balance of the loan, plus interest, notwithstanding the loan period originally set pursuant to subdivision (c), unless the board deems it appropriate to waive repayment at that time.

(f) If the renovated facility has been continuously used for purposes of the child care and development program for the entire loan period, the board shall waive repayment of the amount of the loan principal, plus interest, at the end of the loan period.

SEC. 3. Section 54742 of the Education Code is amended to read:

54742. (a) It is the intent of the Legislature to establish a comprehensive, continuous, and community linked school-based program that focuses on youth development and dropout prevention for

pregnant and parenting pupils and on child care and development services for their children for the purpose of improving results for approximately 60,000 pupils and their children.

(b) The goals of the program are all of the following:

(1) A significant number of eligible female and male pupils in need of targeted supportive services related to school success will be served.

(2) Pupils shall have the opportunity to be continuously enrolled in the Cal-SAFE program through graduation from high school.

(3) Pupils served who receive program services for one or more years will earn a high school diploma or its equivalent or demonstrate progress towards completion of education goals.

(4) Pupils served who graduate will transition to postsecondary education, including a technical school, or into the world of work.

(5) Pupils served and their children will not become welfare dependent.

(6) Pupils served will demonstrate effective parenting skills.

(7) Pupils served will not have a repeat birth or father a repeat pregnancy before graduating from high school.

(8) Pregnant pupils served will not have a low birth weight baby.

(9) Children of enrolled teen parents will receive child care and development services based upon the assessed developmental and health needs of each child.

(10) Children of enrolled teen parents will receive health screening and immunizations except when the custodial parent annually provides a written request for an exemption pursuant to Section 49451 and Section 120365 of the Health and Safety Code.

(11) Children of enrolled teen parents will have enhanced school readiness, demonstrate progress towards meeting their assessed developmental goals, or both.

(c) It is the intent of the Legislature that if there are not enough resources to serve all eligible pupils, the program shall target services to pupils who are most in need or to pupils who are least likely to access services on their own.

(d) It is the intent of the Legislature that Cal-SAFE programs be integrated with local Adolescent Family Life programs and Cal-Learn programs in a manner that avoids duplication of services.

SEC. 4. Section 54745 of the Education Code is amended to read:

54745. (a) In the administration of the Cal-SAFE program, the following provisions shall apply:

(1) Participation by a school district or county superintendent of schools in the Cal-SAFE program is voluntary.

(2) The governing board of a school district or county superintendent of schools may submit an application to the State Department of

Education in the manner, form, and date specified by the department to establish and maintain a Cal-SAFE program.

(3) A school district or county superintendent of schools approved to implement the Cal-SAFE program shall be funded as one program to be operated at one or multiple sites depending upon the need within the service area.

(4) Notwithstanding any other provision of law, a school district or county superintendent of schools operating, by October 1, 1999, a School Age Parent and Infant Development Program pursuant to Article 17 (commencing with Section 8390) of Chapter 2 of Part 6, a Pregnant Minors Program pursuant to Chapter 6 (commencing with Section 8900) of Part 6 and Section 2551.3, or a Pregnant and Lactating Students Program pursuant to Sections 49553 and 49559, as those provisions existed prior to the operative date of the act that adds this article, or any combination thereof, that chooses to participate in the Cal-SAFE program shall have priority for Cal-SAFE program funding for an amount up to the dollar amount provided to each school district or county superintendent of schools under those provisions in the fiscal year prior to participation in the Cal-SAFE program, provided that an application is submitted and approved.

(5) If a school district or county superintendent of schools operating a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program, or any combination thereof, chooses not to participate in the Cal-SAFE program, it is the intent of the Legislature that the funding it would have received for the operation of those programs shall be redirected to the Cal-SAFE program and the school district or county superintendent of schools may apply in a subsequent school year to operate a Cal-SAFE program.

(6) A school district or county superintendent of schools that terminates its Cal-SAFE program may reapply to establish a Cal-SAFE program.

(7) In order to continue implementation of the Cal-SAFE program beyond the initial three years of funding, each funded agency shall be reviewed by the department to determine progress towards achieving the goals set forth in Section 54742. Thereafter, funded agencies shall be reviewed and reauthorized every five years based upon a process determined by the department to continue implementation of a Cal-SAFE program.

(b) All of the following requirements shall apply to an application for the Cal-SAFE program:

(1) The governing board of a participating local education agency shall adopt a policy or resolution declaring its commitment to provide a comprehensive, continuous, community-linked program for pregnant

and parenting pupils and their children that reflects the cultural and linguistic diversity of the community.

(2) The local education agency shall provide assurance for participation in the development of the County Service Coordination Plan as described in Section 54744.

(3) A school district or county superintendent of schools shall agree to participate in the data collection and evaluation of the Cal-SAFE program.

(c) To implement a Cal-SAFE program, the funded school district, or county superintendent of schools shall meet all of the following criteria:

(1) Be in compliance with Title IX of the Education Amendments of 1972 Regulations.

(2) Ensure that enrolled pupils retain their right to participate in any comprehensive school or educational alternative programs in which they could otherwise enroll. School placement and instructional strategies shall be based upon the needs and styles of learning of the individual pupils. The classroom setting shall be the preferred instructional strategy unless an alternative is necessary to meet the needs of the individual parent, child, or both.

(3) Enroll pupils into the Cal-SAFE program on an open entry and open exit basis.

(4) Provide a quality education program to pupils in a supportive and accommodating learning environment with appropriate classroom strategies to ensure school access and academic credit for all work completed.

(5) Provide a parenting education and life skills class to enrolled pupils.

(6) Make maximum utilization of available programs and facilities to serve pregnant and parenting pupils and their children.

(7) Provide a quality child care and development program for the children of enrolled teen parents located on or near the schoolsite.

(8) Make maximum utilization of its local school food service program.

(9) Provide special school nutrition supplements, as defined by subdivision (b) of Section 49553, to pregnant and lactating pupils.

(10) Enter into formal partnership agreements, as necessary, with community-based organizations and other governmental agencies to assist pupils in accessing support services.

(11) Provide staff development and community outreach in order to establish a positive learning environment and school policies supportive of pregnant and parenting pupils' academic achievement and to promote the healthy development of their children.

(12) Maintain an annual program budget and expenditure report to document that funds are expended pursuant to Section 54749.

(13) Assess no fees to enrolled pupils or their families for services provided through the Cal-SAFE program.

(14) Establish and maintain a data base in the manner and form prescribed by the State Department of Education for purposes of program evaluation.

(15) Coordinate to the maximum extent possible with Cal-Learn program case managers provided pursuant to Section 11332.5 of the Welfare and Institutions Code and Adolescent Family Life Program case managers provided pursuant to Article 1 (commencing with Section 124175) of Chapter 4 of Part 2 of Division 106 of the Health and Safety Code.

SEC. 5. Section 54746 of the Education Code is amended to read:

54746. (a) In meeting the goals of the program and responding to the individual needs and differences of pupils and their children to be served, the funded agency shall complete an intake procedure regarding each pupil and child upon entry into the program and periodically as needed thereafter.

(b) Based upon the information provided during the intake procedure pursuant to subdivision (a), the funded agency shall determine appropriate levels and types of services to be provided. These services may not duplicate services currently provided to the pupil by a local Adolescent Family Life Program or Cal-Learn program. In addition to an academic program that meets district standards, necessary support services for pupils shall be funded by the calculation pursuant to paragraph (1) of subdivision (a) of Section 54749. Allowable expenditures for support services are as follows:

(1) Parenting education and life skills class.

(2) Perinatal education and care, including childbirth preparation.

(3) Safe home-to-school transportation.

(4) Case management services.

(5) Comprehensive health education including reproductive health care.

(6) Nutrition education, counseling, and meal supplements.

(7) School safety and violence prevention strategies targeted to pregnant and parenting teens and their children.

(8) Academic support and youth development services, such as tutoring, mentoring, and community service internships.

(9) Career counseling, preemployment skills, and job training.

(10) Substance abuse prevention education, counseling, and treatment services.

(11) Mental health assessment, interventions, and referrals.

(12) Crisis intervention counseling services, including suicide prevention.

(13) Peer support groups and counseling.

(14) Family support and development services, including individual and family counseling.

(15) Child and domestic abuse prevention education, counseling, and services.

(16) Enrichment and recreational activities, as appropriate.

(17) Services that facilitate transition to postsecondary education, training, or employment.

(18) Support services for grandparents, siblings, and fathers of babies who are not enrolled in the Cal-SAFE program.

(19) Outreach activities to identify eligible pupils and to educate the community about the realities of teen pregnancy and parenting.

(c) The funded agency shall provide child care and development program services located on or near the schoolsite for the children of teen parents enrolled in the Cal-SAFE program. Program services shall be funded by the revenue generated pursuant to paragraph (4) of subdivision (a) of Section 54749.

(1) Participation in the child care and development component of the Cal-SAFE program shall be voluntary.

(2) There is no minimum age for enrollment, but the child shall be eligible for enrollment in the child care and development component until the age of five years or the child is enrolled in kindergarten, whichever occurs first, as long as the teen parent is enrolled in the Cal-SAFE program.

(3) Each child shall have a health evaluation form signed by a physician, or his or her designee, before the child is allowed on the school campus or is enrolled in the child care and development program. Health screening and immunizations shall not be required when the custodial parent annually files a written request as provided for in Section 49451 and Section 120365 of the Health and Safety Code.

(4) A developmental profile shall be maintained for each infant, toddler, and child. This development profile shall be utilized by the program staff to design a program that meets the infant's, toddler's, or child's developmental needs.

(5) The arrangement of the child care site environment shall be safe, healthy, and comfortable for children and staff, easily maintained, and appropriate for meeting the developmental needs of the individual child. Child care sites shall meet the health and safety requirements specified in Chapter 1 (commencing with Section 1429) of, and Chapter 2 (commencing with Section 1442) of, Division 12 of Title 22 of the California Code of Regulations.

(6) The child care and development component of the Cal-SAFE program shall operate pursuant to applicable sections of Chapter 2 (commencing with Section 8200) of Part 6. In addition to meeting the requirements of Section 8360, teachers shall have at least three semester

units, or the equivalent number of quarter units, of coursework related to the care of infants and toddlers.

(7) The child care site shall be available as a laboratory for parenting or related courses that are offered by the funded agency with priority given to pupils enrolled in the Cal-SAFE program.

(d) Inservice training for school staff on teen pregnancy and parenting-related issues may be funded from revenue generated pursuant to paragraphs (1) and (4) of subdivision (a) of Section 54749. However, use of these funds for this purpose shall supplement and, not supplant, existing resources in these areas.

(e) The data base required pursuant to paragraph (14) of subdivision (c) of Section 54745 may be funded from revenue appropriated for purposes of subdivision (a) of Section 54749.

SEC. 6. Section 54747 of the Education Code is amended to read:

54747. (a) A male or female pupil, 18 years of age or younger, may enroll in the Cal-SAFE program and be eligible for all services afforded to pupils enrolled if he or she is an expectant parent, the custodial parent, or the noncustodial parent taking an active role in the care and supervision of the child, and has not earned a high school diploma or its equivalent.

(b) A pupil having an active special education Individualized Education Plan (IEP) shall be eligible until age 22, as long as she or he has an active IEP and meets the eligibility criteria as specified in subdivision (a), and shall continue to receive services identified in the IEP while enrolled in the Cal-SAFE program.

(c) Pupils shall be eligible for enrollment on a voluntary basis for as long as they meet eligibility criteria specified in subdivisions (a) and (b) until they earn a high school diploma or its equivalent.

(d) A pupil may not be denied initial or continuous enrollment in the Cal-SAFE program for any of the following reasons:

(1) The pupil has had multiple pregnancies.

(2) The pupil has more than one child.

(3) The pupil's eligibility status changed from pregnant to parenting.

(e) If an enrolled 18-year-old pupil reaches age 19 without earning a high school diploma or its equivalent, the pupil may be enrolled for one additional semester if the pupil has been continuously enrolled in the Cal-SAFE program since before his or her 19th birthday.

(f) Pupils receiving services under Article 3.5 (commencing with Section 11331) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code are eligible for services under this chapter. Child care provided under this article shall be the primary source of child care for these recipients when participating in a Cal-SAFE program operated by school districts or county superintendents of schools.

SEC. 7. Section 54749 of the Education Code is amended to read:

54749. (a) For the 2000–01 fiscal year and each fiscal year thereafter, a school district or county superintendent of schools participating in Cal-SAFE shall be eligible for state funding from funds appropriated for services provided for the purposes of the program as follows:

(1) A support services allowance of two thousand two hundred thirty-seven dollars ($2,237) for each unit of average daily attendance generated by each pupil who has completed the intake process pursuant to subdivision (a) of Section 54746 and is receiving services pursuant to subdivision (b) of Section 54746. This allowance shall be adjusted annually by the inflation factor set forth in subdivision (b) of Section 42238.1. In no event shall more than one support service allowance be generated by any pupil concurrently enrolled in more than one educational program.

This allowance may not be claimed for units of average daily attendance reported pursuant to the following:

(A) Subdivision (b) of Section 1982 for pupils attending county community schools operated pursuant to Chapter 6.5 of Part 2 (commencing with Section 1980).

(B) Pupils attending juvenile court schools operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27.

(C) Pupils attending community day schools operated pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(D) Pupils attending county operated Cal-SAFE programs pursuant to this article whose attendance is reported pursuant to Section 2551.3.

(2) Average daily attendance and revenue limit funding for pupils receiving services in the Cal-SAFE program shall be computed pursuant to provisions and regulations applicable to the educational program or programs that each pupil attends, except as provided in paragraph (3).

(3) For attendance not claimed pursuant to paragraph (2), county offices of education may claim the statewide average revenue limit per unit of average daily attendance for high school districts, payable from Section A of the State School Fund, for the attendance of pupils receiving services in the Cal-SAFE program, provided that no other revenue limit funding is claimed for the same pupil and pupil attendance of no less than 240 minutes per day and is computed and maintained pursuant to Section 46300.

(4) Except as provided in subdivision (c) of Section 54749.5, operators of Cal-SAFE programs shall be reimbursed in accordance with the amount specified in subdivision (b) of Section 8265 and the amounts specified in subdivisions (a) and (b) of Section 8265.5 for each child receiving services pursuant to the Cal-SAFE program who is the child of teen parents enrolled in the Cal-SAFE program. To be eligible for funding pursuant to this paragraph, the operational days of child care and

development programs shall be only those necessary to provide child care services to children of pupils participating in Cal-SAFE.

(5) Notwithstanding paragraph (1), pupils for whom attendance is reported pursuant to subdivision (b) of Section 1982, pupils attending juvenile court schools, and pupils attending community day schools may complete the intake process for the Cal-SAFE program and, if the intake process is completed, shall receive services pursuant to subdivision (b) of Section 54746. The children of pupils receiving services in the Cal-SAFE program pursuant to subdivision (b) of Section 54746 and attending juvenile court schools, county community schools, or community day schools shall be eligible for funding pursuant to paragraph (4) and no other provisions of this section.

(b) Funds allocated pursuant to paragraph (1) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide the supportive services enumerated in subdivisions (b) of Section 54746, in service training as specified in subdivision (d) of Section 54746, and expenditures enumerated in subdivision (d) of this section, to pupils enrolled in the Cal-SAFE program as determined pursuant to Section 54746.

(c) Funds allocated pursuant to paragraph (4) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide developmentally appropriate child care and development services pursuant to subdivision (c) of Section 54746 and staff development of child development program staff pursuant to subdivision (d) of Section 54746 for children of teen parents enrolled in the Cal-SAFE program for the purpose of promoting the children's development comparable to age norms, access to health and preventive services, and enhanced school readiness.

(d) Funds generated pursuant to Section 2551.3 and this section shall be maintained in a separate account and shall be expended only to provide the services enumerated in Section 54746 and the following expenditures as defined by the California State School Accounting Manual:

(1) Expenditures defined as direct costs of instructional programs.

(2) Expenditures defined as documented direct support costs.

(3) Expenditures defined as allocated direct support costs.

(4) Expenditures for indirect charges.

(5) Expenditures defined as facility costs, including the costs of renting, leasing, lease purchase, remodeling, or improving buildings.

(e) Indirect costs shall not exceed the lesser of the approved indirect cost rate or 10 percent.

(f) Expenditures that represent contract payments to community-based organizations and other governmental agencies pursuant to paragraph (10) of subdivision (b) of Section 54745 for the

operation of a Cal-SAFE program shall be included in the Cal-SAFE program account.

(g) To the extent permitted by federal law, any funding made available to a school district or county superintendent of schools shall be subject to all of the following conditions:

(1) The program is open to all eligible pupils without regard to any pupil's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space in which the program is operated is not used in any manner to foster religion during the time used for operation of the program.

(h) A school district or county superintendent of schools implementing a Cal-SAFE program may establish a claims process to recover federal funds available for any services provided that are Medi-Cal eligible.

(i) For purposes of serving pupils enrolled in the Cal-SAFE program in a summer school program or enrolled in a school program operating more than 180 days, eligibility for child care services pursuant to subdivision (c) of Section 54746 shall be determined by the parent's hours of enrollment and shall be for only those hours necessary to further the completion of the parent's educational program.

(j) To meet startup costs for the opening of child care and development sites, as defined in subdivision (ac) of Section 8208, and applicable regulations, a school district or county office of education may apply for a one-time 15-percent service level exemption within the amount appropriated in the annual Budget Act for the purposes of paragraph (4) of subdivision (a) for each site meeting the provision of subdivision (ac) of Section 8208. To the extent that Budget Act funding is insufficient to cover the full costs of Cal-SAFE child care, reimbursements to all participating programs shall be reduced on a pro rata basis. A school district or county office of education shall submit claims pursuant to this subdivision with other claims submitted pursuant to this section. Funding provided for startup costs shall be utilized for approvable startup costs enumerated in subdivision (a) of Section 8275.

(k) Notwithstanding any other provision of this article, its implementation of this article is contingent upon appropriations in the annual Budget Act for the purpose of its administration and evaluation by the State Department of Education.

(*l*) Notwithstanding any other provision of law, a charter school may apply for funding pursuant to this article and shall meet the requirements of this article to be eligible for funding pursuant to this section.

SEC. 8. Section 54749.5 of the Education Code is amended to read:

54749.5. (a) County superintendents who operated pregnant minors programs in the 1979–80 fiscal year, or commenced operation

during the 1996–97 fiscal year, shall continue to operate pregnant minors programs in the 1980–81 fiscal year, or the 1997–98 fiscal year, as appropriate, and each fiscal year thereafter, and school districts that increased their revenue limit in the 1981–82 fiscal year pursuant to subdivision (d) of Section 42241 shall continue to operate pregnant minors programs in subsequent fiscal years, unless the program is transferred to another local education agency, or unless the county superintendent or district superintendent demonstrates that programs and services for pregnant minors, such as continuation school, home instruction, or independent instruction, are available from other local education agencies in the county, pursuant to rules and regulations adopted by the Superintendent of Public Instruction.

(b) Pregnant minors programs that continue to operate pursuant to subdivision (a) and that continue to operate as Cal-SAFE programs may continue to claim funding pursuant to Section 2551.3 for an amount of average daily attendance up to the amount certified at the 1998–99 annual apportionment for that program. Programs continuing under this section may enroll pupils above the level of average daily attendance certified at the 1998–99 annual apportionment, and that additional average daily attendance shall be eligible for funding pursuant to Section 54749 and provisions that apply to the educational program that the pupil attends.

(c) County offices of education that choose to retain their pregnant minor program revenue limit rather than convert to the Cal-SAFE revenue limit shall provide child care services from funds provided in their pregnant minor program revenue limit pursuant to Section 2551.3 for children of pupils comprising base year average daily attendance as certified at the 1998–99 annual apportionment. Growth funding for child care shall be equal to the proportionate share of child care funding for the specific agency's program, determined by dividing the certified growth in pupil average daily attendance by the total certified average daily attendance.

(d) Nothing in this section shall be construed as allowing a county superintendent to receive funding pursuant to Sections 2551.3 and 54749 for the same average daily attendance, or for average daily attendance generated by the same pupil on the same calendar day.

CHAPTER 1058

An act to amend Sections 8006, 8007, 8070, 8092, 8092.5, 8093, 8100, 8278.3, 33050, 35106, 35500, 35704, 35707, 35720.5, 35756, 37220.6, 41344, 41851.12, 42238, 42239, 42239.2, 42261, 42263,

42267, 45023.1, 47636, 482099, 48664, 51220, 51224, 51225.3, 51225.4, 51226, 51412, 52270, 52300, 52301, 52302, 52302.3, 52302.5, 52302.7, 52302.9, 52303, 52305, 52309, 52329, 52331, 52336, 52336.5, 52342, 52350, 52351, 52353, 52354, 52370, 52371, 52372, 52372.1, 52373, 52375, 52376, 52381, 52382, 52383, 52384, 52388, 52450, 52452, 52453, 52454, 52460, 52461, 52461.5, 52485, 52487, 52488, 52489, 52490, 52495, 52497, 52498, 52499, 52499.3, 52904, 56836.10, and 56836.11 of, to amend the heading of Article 5 (commencing with Section 8090) of Chapter 1 of Part 6 of, to amend the heading of Article 3 (commencing with Section 52350), Article 4 (commencing with Section 52370), Article 7 (commencing with Section 52450), Article 7.5 (commencing with Section 52460), Article 9 (commencing with Section 52485), and Article 9.5 (commencing with Section 52495) of Chapter 9 of Part 28 of, to amend the heading of Chapter 9 (commencing with Section 52300) of Part 28 of, to amend and renumber Sections 56375, 56376, 56377, and 56378 of, to add Sections 52334 and 52377 to, and to repeal Sections 8234, 15720, 16098, 16730, 18185, 35735.3, 44689.5, 49581, 52980, 52981, 52982, 54750, 54751, 54751.1, 54752, and 56138 of, the Education Code, to amend Sections 19050.8, 53095, and 66455.9 of the Government Code, to amend Section 104420 of the Health and Safety Code, to amend Item 6110-104-0001 of Section 2.00 of the Budget Act of 2000, Item 6110-105-001 of Section 2.00 of the Budget Act of 2000, Item 6110-134-0001 of Section 2.00 of the Budget Act of 2000, Item 6110-151-0001 of Section 2.00 of the Budget Act of 2000, Item 6110-165-0001 of Section 2.00 of the Budget Act of 2000, Item 6110-495 of Section 2.00 of the Budget Act of 2000, and to amend Sections 35 and 42 of Chapter 71 of the Statutes of 2000, relating to education, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

I am signing Assembly Bill 2907. However, I am reducing certain specified appropriations to maintain my actions taken regarding SB 1667 (Chapter 71/2000), and because I have specific concerns with the additional project proposed to be added pursuant to paragraph 56 of subdivision (a). The language below conforms to my action regarding SB 1667, and also makes this additional reduction:

I am reducing the appropriation made by Section 42 of Chapter 71 of the Statutes of 2000, as proposed to be amended by this Section 129 of this bill, from $33,352,000 to $15,761,000. The specific reductions are as follows:

I am reducing the appropriation in Section 42 by eliminating paragraph (6) of subdivision (a), which allocates $300,000 to the San Francisco Unified School District for expansion of arts education in grades K-5. Grants for this purpose are available on a competitive basis through the Department of Education, and I am therefore deleting this appropriation to fund higher competing priorities.

I am reducing the appropriation in Section 42 by reducing paragraph (7) of subdivision (a) from $500,000 to $400,000, to the Culver City Unified School District to repair the track at Culver City High School, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (8) of subdivision (a), which allocates $10,000 to the Los Angeles Unified School District for a school-based/school-linked health program at the Maclay Middle School. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (9) of subdivision (a), which allocates $10,000 to the Los Angeles Unified School District for a school-based/school-linked health program at the Pacoima Middle School. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (11) of subdivision (a), which allocates $20,000 to the Manhattan Beach Unified School District for the purchase of equipment for teaching aids to reduce diversity intensity and increase cultural awareness at Mira Costa High School, to fund higher competing priorities,

I am reducing the appropriation in Section 42 by eliminating paragraph (15) of subdivision (a), which allocates $100,000 to Ligget Elementary for establishment of a Parent Education Center. Grants are already available for this purpose through the Department of Education, pursuant to the Parental Involvement Program established pursuant to Chapter 734 of the Statutes of 1999. Additional, support for this purpose should be provided from local resources.

I am reducing the appropriation in Section 42 by eliminating paragraph (18) of subdivision (a), which allocates $200,000 to the Sunnyvale Elementary School District for Project H.E.L.P. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (19) of subdivision (a), which allocates $250,000 to the Lamont Elementary School District for portable classrooms. Funding for this purpose should be sought through the State Allocation Board process.

I am reducing the appropriation in Section 42 by eliminating paragraph (22) of subdivision (a), which allocates $450,000 to the Los Angeles Unified School District for the San Fernando High School Health Clinic. I am reducing this appropriation in order to fund competing higher priorities.

I am sustaining the appropriation of $500,000 in paragraph (23) of subdivision (a) of Section 42 for the Baldwin Park Unified School District's Drama, Reading, English, and Mathematics (DREAM) project, on a one-time basis only, thus any future support for this project should be provided from local resources.

I am reducing the appropriation in Section 42 by reducing paragraph (24) of subdivision (a) from $500,000 to $200,000, to the Montebello Unified School District for natural gas powered delivery trucks, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (25) of subdivision (a), which allocates $150,000 to the Elk Grove Unified School District for a Japanese language academy. I am deleting this appropriation to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (26) of subdivision (a), which allocates $500,000 to the Oakland Unified School District for a reading training program. The Budget Bill already includes significant funding for reading staff development, reading programs, and remedial instruction in reading, and I am therefore unable to support this request.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (27) of subdivision (a), from $350,000 to $200,000 for allocation to the Burbank Unified School District to continue a literacy program on a one-time basis only, thus any future support for this project should be provided from local resources.

I am sustaining the appropriation of $300,000 in paragraph (28) of subdivision (a) of Section 42 for the Temple City Unified School District's Arts Academy, on a one-time basis only, future support for this project should be provided from local resources.

I am reducing the appropriation in Section 42 by eliminating paragraph (29) of subdivision (a), which allocates $400,000 to the Alum Rock Union Elementary School District for a mathematics/science center that would provide training and science/mathematics supplies to teachers. The 2000–01 Budget already contains $246 million for the Staff Development Day Buy-Out program and $108 million for a variety of Professional Development Institutes, including institutes in elementary mathematics and algebra, to help improve teacher's skills and expertise in classroom instruction.

I am reducing the appropriation in Section 42 by eliminating paragraph (30) of subdivision (a), which allocates $50,000 to the Santa Monica Malibu Unified School District for an after school youth program at Malibu High School. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (32) of subdivision (a), which allocates $200,000 to the Tahoe-Truckee Unified School District for the North Tahoe Youth Center. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (34) of subdivision (a), which allocates $675,000 to the Los Alamitos Unified School District for reimbursement for class size reduction costs. Funding for this purpose should be sought through the class size reduction facilities program.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (35) of subdivision (a), from $10,000,000 to $5,000,000 for allocation to the Alvord Unified School District for construction costs associated with the Center for Primary Education. The balance of funding required for this project should be sought through the School Facilities Program or from local resources.

I am reducing the appropriation in Section 42 by eliminating paragraph (36) of subdivision (a), which allocates $900,000 to the Riverside County Office of Education for the purpose of screening and diagnosing pupils for Scotopic Sensitivity Syndrome, to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (37) of subdivision (a), which allocates $500,000 to the Saugus Union Elementary School District for costs associated with testing air quality in portable classrooms. As indoor air quality in portable classrooms is an important issue, the Budget provides $1 million to the Air Resources Board and the State Department of Health Services for purposes of conducting a comprehensive study and review of the environmental health conditions, including air quality, in portable classrooms.

I am reducing the appropriation in Section 42 by eliminating paragraph (38) of subdivision (a), which allocates $275,000 to the Inyo County Office of Education for facilities costs. Funding for this project may be available through the School Facilities Program.

I am reducing the appropriation in Section 42 by eliminating paragraph (39) of subdivision (a), which allocates $500,000 to the Calaveras Unified School District for swimming pool renovations, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (40) of subdivision (a), which allocates $27,000 to the Alta-Dutch Flat Union Elementary School District for Afternoon Transportation Services, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (43) of subdivision (a), which allocates $469,000 to the Mariposa Unified School District for declining ADA. As current law provides sufficient provisions to cushion the loss of ADA

for school districts, I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (44) of subdivision (a), from $568,000 to $285,000 for the Chatom Union Elementary School District. The original augmentation included funding for declining ADA and for the purchase of school buses. As current law provides sufficient provisions to cushion the loss of ADA for school districts, I am reducing this appropriation maintaining only the funding for the purchase of school buses.

I am reducing the appropriation in Section 42 by eliminating paragraph (45) of subdivision (a), which allocates $3,700,000 to the Clovis Unified School District fro the Central Valley Applied Agriculture and Technology Center. I am deleting this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph(47) of subdivision (a), which allocates $112,000 to the Alameda County Office of Education for the Smart Kids, Safe Kids program. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (52) of subdivision (a), which allocates $160,000 to the Soledad Enrichment Charter School for Operation Y.E.S. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (55) of subdivision (a), from $5,000,000 to $3,700,000 for the Clovis and Fresno Unified School Districts for the Center for Advanced Research and Technology reducing this appropriation to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (56) of subdivision (a), which allocates $500,000 to the Los Angeles Unified School District for the renovation of the San Fernando Middle School auditorium. I am reducing this appropriation because available information indicates the bill incorrectly identifies the intended recipient of these funds. Resources for this purpose should be provided on a priority basis by the appropriate local entities.

GRAY DAVIS, Governor

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

SECTION 1. Section 8006 of the Education Code is amended to read:

8006. (a) There is, in the State Department of Education a career technical education staff responsible for the design, implementation, and maintenance of a basic integrated statewide information system for career technical education and technical training. The Board of Governors of the California Community Colleges shall collect and maintain information related to career technical education and technical training within the California Community Colleges for inclusion within the integrated statewide information system.

(b) The data gathering and analysis capabilities of the system described in subdivision (a) shall include, but not be limited to, maintaining comprehensive inventory of all programs of all career technical education and technical training programs which are maintained by the public schools.

SEC. 2. Section 8007 of the Education Code is amended to read:

8007. The State Department of Education and the Board of Governors of the California Community Colleges shall submit the following reports each year to the Legislature:

(a) An annual descriptive report containing information on career technical education and technical training programs, including regional occupational centers and programs. The report shall be coordinated with federal evaluation requirements pursuant to Public Law 101-392 and shall contain all of the following:

(1) Enrollment defined in terms of secondary pupils, postsecondary students, and adults.

(2) The number of graduates of programs and dropout rates.

(3) The number of students trained for specific entry level occupations.

(4) Fiscal information, including income by source and expenditure by category.

(5) Other factors as determined in Budget Act language pursuant to Section 33404.

(b) An annual individual program evaluation derived from a representative sample of participating districts and schools containing information on program effectiveness as measured by:

(1) The extent to which persons who complete the program:

(A) Find employment in occupations related to their training.

(B) Are considered by their employers to be well trained and prepared for employment.

(2) Other factors as determined in Budget Act language pursuant to Section 33404.

(c) A copy of the annual state plan for career technical education.

SEC. 3. Section 8070 of the Education Code is amended to read:

8070. The governing board of each school district participating in a career technical education program shall appoint a career technical education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representatives of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

SEC. 4. The heading of Article 5 (commencing with Section 8090) of Chapter 1 of Part 6 of the Education Code is amended to read:

Article 5. Career Technical Education Contracts

SEC. 5. Section 8092 of the Education Code is amended to read:

8092. (a) Any school district or districts, any county superintendent or superintendents, or the governing body of any agency maintaining a regional occupational center or program may contract with a private postsecondary school that is authorized or approved pursuant to Chapter 3 (commencing with Section 94300) of Part 59 and has been in operation not less than two full calendar years prior to the effective date of the contract, to provide career technical skill training authorized by this code. Any school district, community college district, or county superintendent of schools may contract with an activity center, work activity center, or sheltered workshop to provide career technical skill training authorized by this code in any adult education program for substantially handicapped persons operated pursuant to subdivision (a) of Section 41976.

(b) All contracts between a public entity and a private postsecondary school entered into pursuant to this section, or an activity center, work activity center, or sheltered workshop shall do all of the following:

(1) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the public schools or the tuition the private postsecondary school charges its private students, whichever is lower.

(2) Provide that the public school receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the public entity for the purposes of apportionments from the State School Fund.

(3) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Career Technical Education, or is a course of study for adult schools approved by the State Department of Education under Section 51056.

(c) The students who attend a private postsecondary school or an activity center, work activity center, or sheltered workshop pursuant to a contract under this section shall be enrollees of the public entity and the career technical instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting public entity.

(d) The Department of Finance and the State Department of Education may audit the accounts of both the public entity and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

SEC. 6. Section 8092.5 of the Education Code is amended to read:

8092.5. (a) A community college district may contract with a public or private postsecondary educational institution in a neighboring

state that borders on the district boundary to provide career technical skill training for district students authorized by this code. The contracts shall meet the requirements of Section 8092 and shall meet the general intent of Chapter 7 (commencing with Section 94700) of Part 59.

(b) This section shall become operative on January 1, 1997.

SEC. 7. Section 8093 of the Education Code is amended to read:

8093. The provisions of Article 3 (commencing with Section 39140) of Chapter 2 of Part 23 of Division 3 of Title 2, or Article 7 (commencing with Section 81130) of Chapter 1 of Part 49 of Division 7 of Title 3 shall not apply to any building which is used by a private postsecondary school for purposes of providing career technical skill training for pupils pursuant to a contract under Section 8092 entered into by a public school entity and a private educational institution; provided that all of the following requirements are met:

(a) The building is not owned, leased, rented, or being purchased by, nor situated on property owned or being purchased by, a public school entity.

(b) The only public school purpose for which that building is used is pursuant to a contract entered into pursuant to Section 8092.

(c) The building is not reconstructed, altered, or added to by a public school entity at a cost exceeding ten thousand dollars ($10,000).

SEC. 8. Section 8100 of the Education Code is amended to read:

8100. The Superintendent of Public Instruction shall approve courses of career technical training for the purposes of loans authorized by Section 7185 of the Financial Code.

SEC. 9. Section 8234 of the Education Code is repealed.

SEC. 10. Section 8278.3 of the Education Code is amended to read:

8278.3. (a) (1) The Child Care Facilities Revolving Fund is hereby established in the State Treasury to provide funding for the renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services and for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies who provide child care and development services, pursuant to this chapter. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities into this fund for allocation to school districts and contracting agencies, as specified, for the purchase, transportation, and installation of facilities for replacement and expansion of capacity. School districts and contracting agencies using facilities made available by the use of these funds shall be charged a leasing fee, either at a fair market value for those facilities or at an amount sufficient to amortize the cost of purchase and relocation, whichever is lower, over a 10-year period. Upon full repayment of the purchase and relocation costs, title shall transfer from the State of California to the school district or contracting

agency. The Superintendent of Public Instruction shall deposit all revenue derived from the lease payments into the Child Care Facilities Revolving Fund.

(2) Notwithstanding Section 13340 of the Government Code, all moneys in the fund, including moneys deposited from lease payments, shall be continuously appropriated, without regard to fiscal year, to the Superintendent of Public Instruction for expenditure pursuant to this article.

(b) On or before November 30, 2000, the Superintendent of Public Instruction shall submit a plan to the Office of the Secretary for Education, the Department of Finance, and the Legislative Analyst's Office. This plan shall specify the application procedures to request funding for the renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services, the allowable uses of the funds, and the form of the agreement, including, but not necessarily limited to, provisions to protect the state's interest, including provisions relating to maintenance and the event of contract termination.

(c) On or before August 1, 1998, and on or before August 1 of each fiscal year thereafter, the Superintendent of Public Instruction shall submit to the Office of the Secretary for Education, the Department of Finance, and the Legislative Analyst's Office a report detailing the number of funding requests received and their purpose, the types of agencies which received this facilities funding, the increased capacity that these facilities generated, a description of how the facilities are being used, and a projection of the lease payments collected and the funds available for future use.

SEC. 11. Section 15720 of the Education Code is repealed.

SEC. 12. Section 16098 of the Education Code is repealed.

SEC. 13. Section 16730 of the Education Code is repealed.

SEC. 14. Section 18185 of the Education Code is repealed.

SEC. 15. Section 33050 of the Education Code, as amended by Chapter 71 of the Statutes of 2000, is amended to read:

33050. (a) The governing board of a school district or a county board of education, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, may request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 4 of Part 10.

(2) Chapter 6 (commencing with Section 16000) of Part 10.

(3) Chapter 12 (commencing with Section 17000), Chapter 12.5 (commencing with Section 17070.10), and Chapter 14 (commencing with Section 17085) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 10.5 (commencing with Section 17211):

(A) Chapter 1 (commencing with Section 17211).

(B) Article 1 (commencing with Section 17251) to Article 6 (commencing with Section 17365), inclusive, of Chapter 3.

(C) Sections 17416 to 17429, inclusive; Sections 17459 and 17462 and subdivision (a) of Section 17464; and Sections 17582 to 17592, inclusive.

(8) The following provisions of Part 24 (commencing with Section 41000):

(A) Sections 41000 to 41360, inclusive.

(B) Sections 41420 to 41423, inclusive.

(C) Sections 41600 to 41866, inclusive.

(D) Sections 41920 to 42911, inclusive.

(9) Article 3 (commencing with Section 44930) of Chapter 4 of Part 25 and regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(10) Part 26 (commencing with Section 46000).

(11) Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27.

(12) Section 51513.

(13) Chapter 6.10 (commencing with Section 52120) of Part 28, relating to class size reduction.

(14) Section 52163.

(15) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(16) Sections 52165, 52166, and 52178.

(17) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(18) Section 56364.1, except that this restriction shall not prohibit the State Board of Education from approving any waiver of Section 56364 or Section 56364.2, as applicable, relating to full inclusion.

(19) Article 4 (commencing with Section 60640) of Chapter 5 of Part 33, relating to the STAR Program, and any other provisions of Chapter 5 (commencing with Section 60600) of Part 33 that establish requirements for the STAR Program.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to both of the following:

(1) Whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver.

(2) The exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 16. Section 35106 of the Education Code is amended to read:

35106. When a member of the governing board of a school district which is being reorganized and which will cease to exist takes office as a member of the initial or interim governing board of a newly formed school district, he or she shall cease to be a member of the governing board of the district being reorganized unless he or she elects to remain a member of that board. If the member does not elect to remain on the board of the district being reorganized, the county board of education shall then appoint another person who is eligible to serve on the governing board of the district being reorganized to the vacant position for the duration of the existence of the district being reorganized, but in no case for longer than 12 months.

SEC. 17. Section 35500 of the Education Code is amended to read:

35500. It is the intent of the Legislature to utilize the organization of districts as they existed on January 1, 1981, and local educational needs and concerns shall serve as the basis for future reorganization of districts in each county.

SEC. 18. Section 35704 of the Education Code is amended to read:

35704. The county superintendent of schools, within 30 days after any petition for reorganization is filed, shall examine the petition and, if he or she finds it to be sufficient and signed as required by law, transmit the petition simultaneously to the county committee and to the State Board of Education.

SEC. 19. Section 35707 of the Education Code is amended to read:

35707. (a) Except for petitions for the transfer of territory, the county committee shall expeditiously transmit the petition to the State Board of Education together with its recommendations thereon. It shall also report whether any of the following, in the opinion of the committee, would be true regarding the proposed reorganization as described in the petition:

(1) It would adversely affect the school district organization of the county.

(2) It would comply with the provisions of Section 35753.

(b) Petitions for transfers of territory shall be transmitted pursuant to Section 35704.

SEC. 20. Section 35720.5 of the Education Code is amended to read:

35720.5. (a) The county committee shall adopt a tentative recommendation following which action it shall hold one or more public hearings in the area proposed for reorganization at least 30 days prior to submission of a final recommendation for unification or other reorganization to the State Board of Education.

(b) The public hearing required by this section shall be called when both of the following conditions are met :

(1) Notice is sent to the governing board of each school district involved at least 10 days before the hearing.

(2) Notice of the hearing is either published in a newspaper of general circulation or posted in every schoolhouse and at least three public places in the affected territory, district, or districts.

(c) The notice shall contain information as to the time, place, and purpose of the hearing.

SEC. 21. Section 35735.3 of the Education Code is repealed.

SEC. 22. Section 35756 of the Education Code is amended to read:

35756. The county superintendent of schools, within 35 days after receiving the notification provided by Section 35755, shall call an election, in the manner prescribed in Part 4 (commencing with Section

5000), to be conducted at the next available regular election, in the territory of districts as determined by the State Board of Education.

SEC. 23. Section 37220.6 of the Education Code, as added by Chapter 213 of the Statutes of 2000, is amended to read:

37220.6. (a) There is hereby created the Cesar Chavez Day of Service and Learning program to promote service to the communities of California in honor of the life and work of Cesar Chavez. The program shall be administered by the California Commission on Improving Life Through Service in collaboration with the California Conservation Corps.

(b) The California Commission on Improving Life Through Service may make grants to local and state operated Americorps or Conservation Corps programs that submit proposals to engage pupils through their schools and school districts in community service that qualifies as instructional time on Cesar Chavez Day, pursuant to Section 37220.5, and that honors the life and work of Cesar Chavez. The programs shall be created and organized in consultation with community groups. The Americorps or Conservation Corps programs may implement or administer the programs in collaboration with community groups and nonprofit organizations. The proposals shall demonstrate all of the following:

(1) The ways and extent to which the program will be a collaborative effort between schools and the Americorps program or Conservation Corps program.

(2) The ways that the service will be connected to instruction on the life and work of Cesar Chavez provided on Cesar Chavez Day.

(3) The way in which the service provided will make a meaningful contribution to the community.

(c) Grants made pursuant to subdivision (b) shall be in the amount of one dollar ($1) for each participating pupil, or two hundred fifty dollars ($250) for each school, whichever is greater. The California Commission on Improving Life Through Service may, at its discretion, adjust the grant amount to account for school district size, the size of the project, and the demand on existing funding. Under no circumstances may the amount granted exceed the amount of funding appropriated to carry out this section.

(d) In order for the community service performed under this program to be counted as instructional time, the service shall be performed under the supervision of a teacher, as defined in subdivision (a) of Section 46300.

(e) The Superintendent of Public Instruction shall develop or revise, as needed, a model curriculum on the life and work of Cesar Chavez and submit the model curriculum to the State Board of Education for adoption pursuant to subdivision (b) of Section 37220.5. Upon adoption,

the Superintendent of Public Instruction shall distribute the model curriculum to each school.

(f) It is the intent of the Legislature that nothing in this section, or in the act that adds this section, shall be construed to impose a mandate on school districts.

(g) For the purposes of this section, ''school district'' includes school districts, charter schools, and county offices of education.

SEC. 24. Section 41344 of the Education Code is amended to read:

41344. (a) If, as the result of an audit or review, a local education agency is required to repay an apportionment significant audit exception, the Superintendent of Public Instruction and the Director of Finance, or their designees, within 90 days of the date on which a local education agency receives the final report of the audit or review, shall jointly establish a plan for repayment of state school funds that the local education agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments. At the time the local education agency is notified, the Controller shall also be notified of the repayment plan. The repayment plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) applies, in which case the disallowed amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal. In calculating the disallowed amount, the Controller shall determine the total amount of overpayment received by the local education agency on the basis of average daily attendance, or other data, reported by the local education agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent of Public Instruction and the Director of the Department of Finance concur that repayment of the full liability in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a repayment plan of equal annual payments over a period of up to eight years. The repayment plan shall include interest on each year's outstanding balance at the rate earned on the state's short-term pooled investment fund during that year. The Superintendent of Public Instruction and the Director of the Department of Finance shall jointly establish this repayment plan. The Controller shall withhold amounts pursuant to the repayment plan.

(3) If the Superintendent of Public Instruction and the Director of the Department of Finance do not jointly establish a schedule for repayment and notify the State Controller's Office of that repayment schedule within 90 days following the date on which the local education agency

received the final report of the audit or review, the State Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1) at the next principal apportionment.

(b) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except that a local educational agency may request a waiver of strict compliance in accordance with Section 41609.

(d) Within 60 days of the date on which a local education agency receives a final audit report resulting from an audit or review, a local agency may appeal a finding contained in the final report to a panel consisting of the Superintendent of Public Instruction, the Director of the Department of Finance, and a Chief Administrative Officer of the Fiscal Crisis and Management Assistance Team established pursuant to Section 42127.8, or one of their designees. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local agency may present evidence or arguments if the local education agency believes that the final report contains any finding that was based on errors of fact. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local agency is correct in its assertion in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, ''audit or review'' means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accountant firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local education agency with an opportunity to provide a written response.

SEC. 25. Section 41851.12 of the Education Code is amended to read:

41851.12. For purposes of this article:

(a) ''Approved costs of home-to-school transportation'' means the approved home-to-school transportation expense determined pursuant to the Annual Report of Pupil Transportation as utilized by the State Department of Education.

(b) ''Approved costs of special education transportation'' means the approved special education transportation expense determined pursuant to the Annual Report of Pupil Transportation as utilized by the State Department of Education.

SEC. 26. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) (1) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(A) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(B) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(C) Add the amounts in subparagraphs (A) and (B).

(2) This subdivision shall become inoperative on July 1, 1998.

(e) For districts electing to compute units of average daily attendance pursuant to paragraph (3) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(f) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of

the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

(g) The reduction required by subdivision (f) shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15, paragraph (4) of subdivision (a) of Section 33607.5, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(8) For a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, the amount of statewide average general-purpose funding per unit of average daily attendance received by school districts for each of four grade level ranges, as computed by the State Department of Education pursuant to Section 47633, multiplied by the average daily attendance, in corresponding grade level ranges, of any pupils who attend charter schools funded pursuant to Chapter 6 (commencing with Section 47630) of Part 26.8 for which the district is the sponsoring local educational agency, as defined in Section 47632, and who reside in and would otherwise have been eligible to attend a noncharter school of the district.

(i) No transfer of seventh and eighth grade pupils between an elementary school district and a high school district shall result in the receiving district receiving a revenue limit apportionment for those pupils that exceeds 105 percent of the statewide average revenue limit for the type and size of the receiving school district.

SEC. 26.5. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) (1) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(A) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(B) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(C) Add the amounts in subparagraphs (A) and (B).

(2) This subdivision shall become inoperative on July 1, 1998.

(e) For districts electing to compute units of average daily attendance pursuant to paragraph (3) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(f) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

(g) The reduction required by subdivision (f) shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect

immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and

Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or major maintenance, except for any amount received pursuant to Section 33492.15, paragraph (4) of subdivision (a) of Section 33607.5, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(8) For a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, the amount of statewide average general-purpose funding per unit of average daily attendance received by school districts for each of four grade level ranges, as computed by the State Department of Education pursuant to Section 47633, multiplied by the average daily attendance, in corresponding grade level ranges, of any pupils who attend charter schools funded pursuant to Chapter 6 (commencing with Section 47630) of Part 26.8 for which the district is the sponsoring local educational agency, as defined in Section 47632, and who reside in and would otherwise have been eligible to attend a noncharter school of the district.

(i) No transfer of seventh and eighth grade pupils between an elementary school district and a high school district shall result in the receiving district receiving a revenue limit apportionment for those pupils that exceeds 105 percent of the statewide average revenue limit for the type and size of the receiving school district.

SEC. 27. Section 42239 of the Education Code, as added by Chapter 72 of the Statutes of 2000, is amended to read:

42239. For the 2000–01 fiscal year, and each fiscal year thereafter, the Superintendent of Public Instruction shall compute funding for supplemental instruction for each school district or charter school in the following manner:

(a) Multiply the number of pupil hours of supplemental instruction claimed pursuant to Sections 37252, 37252.2, and 37252.5 by the pupil hour allowance specified in subdivision (c), or by a pupil hour allowance specified in the annual Budget Act in lieu of the amount computed in subdivision (c).

(b) Multiply the number of pupil hours of supplemental instruction claimed pursuant to Sections 37252.6, 37252.8, and 37253 by the pupil hour allowance specified in subdivision (c), or by a per-pupil hour allowance specified in the annual Budget Act in lieu of the amount computed in subdivision (c). The total number of pupil hours of supplemental instruction that may be claimed pursuant to Section 37253 may not exceed the limits on pupil hours that may be claimed as established by subdivisions (c) and (d) of Section 37253. The total number of pupil hours of supplemental instruction that may be claimed pursuant to Section 37252.6 may not exceed the limits on pupil hours that may be claimed as established in subdivision (g) of that section.

(c) Commencing with the 2000–01 fiscal year, hours of supplemental instruction shall be reimbursed at a rate of three dollars and 25 cents ($3.25) per pupil hour, adjusted in future years as specified in this section, provided that a different reimbursement rate may be specified for each fiscal year in the annual Budget Act that appropriates funding for that fiscal year. This amount shall be increased annually by the percentage increase pursuant to subdivision (b) of Section 42238.1 granted to school districts or charter schools for base revenue limit cost-of-living increases.

(d) (1) If appropriated funding is insufficient to pay all claims made in any fiscal year pursuant to Section 37252, 37252.2, or 37252.5, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts pursuant to Section 37252, 37252.2, 37252.5, or subdivision (d) of Section 37253.

(2) If appropriated funding is still insufficient to pay all claims made in any fiscal year pursuant to Section 37252, 37252.2, or 37252.5, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts for supplemental instruction in the prior fiscal year.

(3) If appropriated funding is still insufficient to pay all claims made in any fiscal year pursuant to Section 37252, 37252.2, or 37252.5, the superintendent shall use any available funding appropriated for the purposes of reimbursing school districts for supplemental instruction in the current fiscal year.

(4) The superintendent shall notify the Director of Finance that there is a deficiency of funding appropriated for the purposes of Sections 37252, 37252.2, and 37252.5 only after the superintendent has exhausted all available balances of appropriations made for the current or prior fiscal years for the reimbursement of school districts for supplemental instruction.

(e) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

SEC. 28. Section 42239.2 of the Education Code, as amended by Chapter 72 of the Statutes of 2000, is amended to read:

42239.2. (a) The Superintendent of Public Instruction shall allocate a minimum of six thousand seven hundred sixty-six dollars ($6,766) for supplemental summer school programs established pursuant to Article 1 (commencing with Section 53025) of Chapter 16 of Part 28, from funds appropriated therefor in each school district for which the prior fiscal year enrollment was less than 500 and that offers at least 1,500 hours of supplemental summer school instruction. A school district for which the prior fiscal year enrollment was less than

500 that offers less than 1,500 hours of supplemental summer school offerings shall receive a proportionately reduced allocation.

(b) Minimum allocations for supplemental summer school programs required pursuant to subdivision (a) shall be adjusted for inflation in the 2000–01 fiscal year, and each fiscal year thereafter, in accordance with Section 42238.1.

(c) For purposes of this section a charter school is a schoolsite and is not a school district.

(d) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

SEC. 29. Section 42261 of the Education Code is amended to read:

42261. Commencing in the 1990–91 fiscal year, a school district may apply for a year-round school grant pursuant to this article, if the school district demonstrates to the Superintendent of Public Instruction all of the following:

(a) There is substantial overcrowding in the school district or its high school attendance areas, as demonstrated by current enrollment, capacity of facilities, and growth projections.

(b) The school district will use the grant to implement or operate multitrack year-round educational programs in one or more of its schools in order to increase the capacity of its facilities.

(c) The school district would be eligible to construct new facilities under Chapter 12.5 (commencing with Section 17070.10) of Part 10 absent the use of multitrack year-round educational programs.

SEC. 30. Section 42263 of the Education Code is amended to read:

42263. (a) Commencing in the 1990–91 fiscal year, year-round school grants, in addition to those grants authorized under Section 42262, shall be awarded annually for the operation of multitrack year-round education programs to school districts that meet the criteria specified in this section, in addition to the criteria otherwise applicable under this article.

(b) For each fiscal year, for each schoolsite for which a school district applies for funding under this article, the district shall certify the number of pupils in excess of the capacity of the schoolsite, as determined by State Allocation Board or court-mandated pupil loading standards, for which the district elects to claim funding under this article. The excess pupil capacity calculated for purposes of this subdivision shall reflect only the additional capacity that has been generated as a result of operation on a multitrack year-round basis, and shall not reflect increased capacity generated by any other means. A school district shall be eligible for funding under this section only as to any schoolsite for which the pupil population certified by the district exceeds the capacity of the schoolsite by not less than 5 percent.

(c) To the extent funding is made available for the purposes of this section, the Superintendent of Public Instruction shall allocate to an applicant school district, for each schoolsite that qualifies for funding under subdivision (b), an amount equal to the district's share of the product of the statewide average cost avoided per pupil, as established under subdivision (e), and the number of pupils certified by the district under subdivision (b). For purposes of this subdivision, a district's share shall be determined according to the percentage by which the number of certified pupils reflects an increase in the capacity of the schoolsite, as follows:

	District's Share
1. Less than 5%	0%
2. Equal to or greater than 5% but less than 10%	50%
3. Equal to or greater than 10% but less than 15%	67%
4. Equal to or greater than 15% but less than 20%	75%
5. Equal to or greater than 20% but less than 25%	85%
6. Equal to or greater than 25%	90%

(d) (1) The State Allocation Board shall calculate the statewide average cost avoided per pupil under Chapter 12.5 (commencing with Section 17070.10) of Part 10 through the operation of school facilities on a multitrack year-round basis, based on the following school facilities cost components:

(A) The cost of facilities construction.

(B) The cost of land acquisition.

(C) Relocation costs in connection with land acquisition.

(D) State costs incurred as a result of interest that would be paid by the state for debt service on state general obligation bond financing to construct new school facilities under Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(2) The calculation of costs under subparagraphs (B) and (C) of paragraph (1) shall exclude data from the lowest quartile and the highest quartile.

(3) The State Allocation Board shall calculate the statewide average cost avoided per pupil, pursuant to this subdivision, on the basis of the 1990–91 and 1991–92 fiscal years and every two-year period thereafter. No later than December 1, 1992, and biennially thereafter, the board

shall report to the Legislature the result of its calculation for the prior two-year period.

(e) For the 1990–91 and 1991–92 fiscal years, the ''statewide average cost avoided per pupil,'' for purposes of this section, shall be one thousand one hundred fifty-one dollars ($1,151). For the 1992–93 fiscal year, and each fiscal year thereafter, the ''statewide average cost avoided per pupil'' shall be established by the statute that appropriates funding for the purposes of this section for that fiscal year.

SEC. 31. Section 42267 of the Education Code is amended to read:

42267. (a) Each school district that receives funding for a schoolsite pursuant to Section 42263 for any fiscal year shall report to the Superintendent of Public Instruction, no later than June 30 of that fiscal year, the number of pupils enrolled for the schoolsite in excess of the capacity of the schoolsite, as determined by State Allocation Board or court-mandated pupil loading standards.

(b) The amount of funding otherwise calculated for a schoolsite for any fiscal year pursuant to Section 42263 shall be reduced by the superintendent to reflect the extent to which the number of pupils estimated for that schoolsite for the prior fiscal year is greater than the number of pupils certified in excess of the capacity of the schoolsite for that prior fiscal year. If the amount of that reduction exceeds the funding entitlement for that schoolsite for the current fiscal year, the superintendent shall reduce the first principal apportionment to that school district in the current fiscal year by the amount of that excess.

(c) If the number of pupils estimated for a schoolsite for the prior fiscal year is less than the number of pupils certified in excess of the capacity of the schoolsite for that prior fiscal year, the school district may elect to increase accordingly the number of pupils it subsequently claims for the prior fiscal year. In that event, the superintendent shall increase the district's funding entitlement under Section 42263 for the schoolsite for the current fiscal year, and the district's building area eligibility under Chapter 12.5 (commencing with Section 17070.10) of Part 10 shall be reduced accordingly pursuant to Section 17746.8.

SEC. 32. Section 44689.5 of the Education Code is repealed.

SEC. 33. Section 45023.1 of the Education Code, as added by Chapter 69 of the Statutes of 2000, is amended to read:

45023.1. (a) Commencing with the 2000–01 fiscal year, the governing board of a school district, the county superintendent of schools, or the county board of education may increase, for teachers meeting the requirements prescribed by this section, the salary on its adopted certificated employee salary schedule as provided in subdivision (b). For purposes of this section, any teacher for whom the governing board, county superintendent of schools, or county board of education may increase salaries shall meet all of the following criteria:

(1) Hold a valid California teaching credential, not including an emergency permit, intern certificate or credential, or waiver.

(2) Possess a baccalaureate or higher degree.

(3) Receive a salary paid through the general fund of the district or county office.

(b) The governing board, county superintendent of schools, or county board of education that increases its salaries pursuant to subdivision (a) shall perform the following computations:

(1) The governing board, county superintendent of schools, or county board of education shall designate as the lowest salary on the salary schedule for a certificated employee meeting the criteria in subdivision (a) an amount that is at least an annual salary of thirty-four thousand dollars ($34,000) in the 2000–01 fiscal year.

(2) The governing board, county superintendent of schools, or county board of education shall increase to the annual salary amount in paragraph (1) the salary of any certificated employee meeting the criteria in subdivision (a) whose salary on the salary schedule for the 1999–2000 fiscal year was less than the amount computed in paragraph (1) and, notwithstanding Section 45028, shall incorporate that increase into the salary schedule commencing with the 2000–01 fiscal year.

(c) Each school district or county office of education that increases its beginning teacher annual minimum salary to thirty-four thousand dollars ($34,000) pursuant to subdivision (b) shall elect, except as provided in subdivision (j), to receive reimbursement for the cost of the increase pursuant to only one of the following two options:

(1) Option One:

(A) In fiscal year 2000–01, a school district, county superintendent of schools, or county office of education that increases salaries pursuant to paragraph (2) of subdivision (b) and selects reimbursement Option One shall receive an amount equal to six dollars ($6) times the district's or county office's second principal apportionment average daily attendance for the 1999–2000 fiscal year, excluding attendance in adult education programs and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(B) Divide the amount received from the state pursuant to subparagraph (A) for the 2000–01 fiscal year by the school district or county office of education second principal apportionment average daily attendance for the 1999–2000 fiscal year, excluding attendance in adult education programs and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(C) For the 2001–02 fiscal year and each fiscal year thereafter, for each school district that increases its salaries pursuant to subdivision (a),

the Superintendent of Public Instruction shall sum the results of paragraphs (i) and (ii) and add that figure to the total school district revenue limit computed pursuant to Section 42238:

(i) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs, and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(D) For the 2001–02 fiscal year and each fiscal year thereafter, for each county office of education that increases its salaries subdivision (a), the Superintendent of Public Instruction shall add the sum of paragraphs (i) and (ii) to the county office of education revenue limit computed pursuant to Section 2550:

(i) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs, and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(E) The school district, county superintendent of schools, or county office of education shall utilize these incentive funds not only to meet the new beginning teacher annual minimum salary of thirty-four

thousand dollars ($34,000), but may also use the funds to generally enhance teachers' salaries in order to achieve the goals of retention of qualified, competent, and experienced teachers and the attainment of a reasonable salary commensurate with a teacher's experience, education, and responsibilities.

(2) Option Two: A school district, county superintendent of schools, or county office of education may submit a request to the Superintendent of Public Instruction, on a form supplied by the Superintendent of Public Instruction, for state funding computed as follows:

(A) Total the salaries of all certificated employees receiving increased salaries up to a maximum of thirty-four thousand dollars ($34,000) per person pursuant to subdivision (b) for the 2000–01 fiscal year.

(B) Total all salaries, based on the salary schedule for the 2000–01 fiscal year before the increase made pursuant to subdivision (b), of all certificated employees receiving increased salaries pursuant to subdivision (b).

(C) Subtract the amount in subparagraph (B) from the amount in subparagraph (A).

(D) Multiply the amount in subparagraph (C) by the district's statutory benefit rates.

(E) For the 2000–01 fiscal year, a school district, county superintendent of schools, or county office of education that increases salaries pursuant to paragraph (2) of subdivision (b) and selects reimbursement Option Two shall receive the sum of paragraphs (C) and (D).

(F) Divide the sum of the amounts received pursuant to paragraphs (C) and (D) for the 2000–01 fiscal year by the school district and county office of education average daily attendance for the second principal apportionment for the 2000–01 fiscal year, excluding attendance in adult education programs and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(G) For the 2001–02 fiscal year and each fiscal year thereafter, for each school district that increases its salaries pursuant to subdivision (a), the Superintendent of Public Instruction shall sum the results of paragraphs (i) and (ii) and add that figure to the total school district revenue limit computed pursuant to Section 42238:

(i) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs,

and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(H) For the 2001–02 fiscal year and each fiscal year thereafter, for each county office of education that increases its salaries subdivision (a), the Superintendent of Public Instruction shall add the sum of paragraphs (i) and (ii) to the county office of education revenue limit computed pursuant to Section 2550:

(i) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs, and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(d) Any state funds received pursuant to this section and not used pursuant to the conditions of this section shall be returned to the state.

(e) If the funds requested by the school districts, the county superintendents of schools, and the county offices of education for the 2000–01 fiscal year exceed the state appropriation for this section, the Superintendent of Public Instruction shall reduce all requests by the application of a single, common percentage factor for apportionment purposes, so as not to exceed the amount appropriated for this purpose.

(f) A school district or county office of education shall receive reimbursement pursuant to subdivision (c) only. However, this section

does not prohibit a school district and its employees from negotiating salary schedules.

(g) The adjustments to school district and county office of education revenue limits prescribed in subparagraphs (C) and (D) of paragraph (1) of subdivision (c) and subparagraphs (G) and (H) of paragraph (2) of subdivision (c), respectively, shall continue so long as the increase in the salary schedule made pursuant to paragraph (2) of subdivision (b) or subdivision (i) is maintained.

(h) The Superintendent of Public Instruction shall issue appropriate forms to school districts and county offices of education no later than September 1, 2000. School districts, county superintendents of schools, or county offices of education shall notify the Superintendent of Public Instruction no later than December 31, 2000, regarding which option they wish to exercise for the 2000–01 fiscal year. School districts, county superintendents of schools, or county offices of education shall file their claim form for state funds with the Superintendent of Public Instruction no later than March 1, 2001.

(i) Adjustments made to school district or county office of education revenue limits pursuant to subparagraphs (C) and (D) of paragraph (1) of subdivision (c) and subparagraphs (G) and (H) of paragraph (2) of subdivision (c), respectively, shall not be considered part of the base revenue limit for the purpose of computing equalization adjustments or determining other wealth-related differences in school funding.

(j) Notwithstanding subdivision (c), a school district or county office of education that already has as the annual minimum salary for beginning teachers who meet the criteria in subdivision (a) in an amount equal to or greater than thirty-four thousand dollars ($34,000) shall be eligible to receive reimbursement pursuant to Option One.

SEC. 34. Section 47636 of the Education Code is amended to read:

47636. (a) This chapter may not be construed to prevent charter schools from applying for, or receiving, operational funding under state or federal categorical programs, the funding of which is not included in the computation of the block grant entitlement. Unless specifically prohibited, a charter school shall only apply for federal or state categorical programs as follows:

(1) A charter school that elects to receive its funding directly, pursuant to Section 47651, may apply for federal and state categorical programs individually. Except as otherwise provided in this chapter, for purposes of determining eligibility for, and allocations of federal or state categorical aid, a charter school that applies individually shall be deemed to be a school district.

(2) A charter school that does not elect to receive its funding directly may apply for federal and state categorical programs in cooperation with its authorizing local educational agency.

(b) This chapter may not be construed to prevent a charter school from negotiating with a local educational agency for a share of operational funding from sources not otherwise set forth in this chapter including, but not limited to, all of the following:

(1) Forest reserve revenues and other operational revenues received due to harvesting or extraction of minerals or other natural resources.

(2) Sales and use taxes, to the extent that the associated revenues are available for noncapital expenses of public schools.

(3) Parcel taxes, to the extent that the associated revenues are available for noncapital expenses of public schools.

(4) Ad valorem property taxes received by a school district which exceed its revenue limit entitlement.

(5) ''Basic aid'' received by a school district pursuant to Section 6 of Article IX of the California Constitution.

SEC. 35. Section 48209.9 of the Education Code is amended to read:

48209.9. (a) Commencing January 1, 1994, any application for transfer under this article shall be submitted by the pupil's parent or guardian to the school district of choice that has elected to accept transfer pupils pursuant to Section 48209.1 prior to January 1 of the school year preceding the school year for which the pupil is to be transferred. This application deadline may be waived upon agreement of the pupil's school district of residence and the school district of choice.

(b) The application shall be submitted on a form provided for this purpose by the State Department of Education and may request enrollment of the pupil in a specific school or program of the district.

(c) Not later than 90 days after the receipt by a school district of an application for transfer, the governing board of the district shall notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or of the pupil's position on any waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year for which the pupil is to be transferred. In the event of an acceptance, that notice shall be provided also to the school district of residence. If the application is rejected, the district governing board shall set forth in the written notification to the parent or guardian the specific reason or reasons for that determination, and shall ensure that the determination, and the specific reason or reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(d) The parent or guardian of a pupil who is prohibited from transferring pursuant to either subdivision (b) of Section 48209.1 or Section 48209.7 may appeal the decision to the county board of education.

(e) Final acceptance of the transfer is applicable for one school year and will be renewed automatically each year unless the school district of choice through the adoption of a resolution withdraws from participation in the program and no longer will accept any transfer pupils from other districts. However, if a school district of choice withdraws from participation in the program, high school pupils admitted under this article may continue until they graduate from high school.

SEC. 36. Section 48664 of the Education Code, as amended by Chapter 71 of the Statutes of 2000, is amended to read:

48664. (a) (1) In addition to funds from all other sources, the Superintendent of Public Instruction shall apportion to each school district that operates a community day school four thousand dollars ($4,000) per year, and for each county office of education that operates a community day school three thousand dollars ($3,000) per year, for each unit of average daily attendance reported at the annual apportionment for pupil attendance at community day schools, adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1. Average daily attendance reported for this program shall not exceed 0.375 percent of a district's prior year P2 average daily attendance in an elementary school district, 0.5 percent of a district's prior year P2 average daily attendance in a unified school district, or 0.625 percent of a district's prior year P2 average daily attendance in a high school district. The units of average daily attendance of a community day school operated by a county office of education shall not exceed the unused units of average daily attendance of the community day schools operated by the school districts within the jurisdiction of that county office of education.

(2) The Superintendent of Public Instruction may reallocate to any school district any unexpended balance of the appropriations made for the purposes of this subdivision for actual pupil attendance in excess of the percentage specified in this subdivision for the school district in an amount not to exceed one-half of that percentage. However, the average daily attendance generated by pupils expelled pursuant to subdivision (d) of Section 48915, shall not be subject to these percentage caps on average daily attendance.

(b) The average daily attendance of a community day school shall be determined by dividing the total number of days of attendance in all full school months, by a divisor of 70 in the first period of each fiscal year, by a divisor of 135 in the second period of each fiscal year, and by a divisor of 180 at the annual time of each fiscal year.

(c) The Superintendent of Public Instruction shall apportion to each school district that operates a community day school an amount equal to four dollars ($4), adjusted annually commencing with the 1999–2000

fiscal year for inflation pursuant to subdivision (b) of Section 42238.1, multiplied by the total of the number of hours each schoolday, up to a maximum of two hours daily, that each community day school pupil remains at the community day school under the supervision of an employee of the school district, or a consortium of school districts pursuant to Section 48916.1, reporting the attendance of the pupils for apportionment funding following completion of the full six-hour instructional day.

(d) It is the intent of the Legislature that districts enter into consortia, as feasible, for the purpose of providing community day school programs. Any school district with fewer than 2,501 units of average daily attendance may request a waiver for any fiscal year of the funding limitations set forth in this section. The Superintendent of Public Instruction shall approve a waiver if he or she deems it necessary in order to permit the operation of a community day school of reasonably comparable quality to those offered in a school district with 2,501 or more units of average daily attendance. In no event shall the amount allocated pursuant to a waiver exceed the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in kindergarten and grades 1 to 6, inclusive, or the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in grades 7 to 12, inclusive. The provisions of this act shall not apply to any school district that applied for a waiver within the funding limits established by this subdivision but was denied funding or not fully funded.

(e) The State Department of Education shall evaluate and report to the appropriate legislative policy committees and budget committees on or before October 1, 1998, and for two years thereafter the following programmatic and fiscal issues:

(1) The number of expulsions statewide.

(2) The number of school districts operating community day schools.

(3) Status of the countywide plans as defined in Section 48926.

(4) An evaluation of the community day school average daily attendance funding percentage cap.

(5) Number of small school districts requesting and the number receiving a waiver under this section.

(6) The effect of hourly accounting under Section 48663 for purposes of receiving the additional funding under Section 48664.

(7) The number of pupils and average daily attendance served in community day programs, further identified as the number expelled pursuant to subdivision (b) of Section 48915, subdivision (d) of Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a) (c), and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section 48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

(g) A one-time adjustment shall be made to the amount specified in subdivision (a), for the 1998–99 fiscal year and subsequent fiscal years, by increasing that amount by the statewide average quotient resulting from dividing the average daily attendance specified in subparagraph (B) of paragraph (3) of subdivision (a) of Section 42238.8 by the amount specified in subparagraph (C) of paragraph (3) of subdivision (a) of Section 42238.8.

SEC. 37. Section 49581 of the Education Code is repealed.

SEC. 38. Section 51220 of the Education Code is amended to read:

51220. The adopted course of study for grades 7 to 12, inclusive, shall offer courses in the following areas of study:

(a) English, including knowledge of and appreciation for literature, language, and composition, and the skills of reading, listening, and speaking.

(b) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; instruction in our American legal system, the operation of the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the State and Federal Constitutions; the development of the American economic system, including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.

(c) Foreign language or languages, beginning not later than grade 7, designed to develop a facility for understanding, speaking, reading, and writing the particular language.

(d) Physical education, with emphasis given to physical activities that are conducive to health and to vigor of body and mind.

(e) Science, including the physical and biological aspects, with emphasis on basic concepts, theories, and processes of scientific

investigation and on the place of humans in ecological systems, and with appropriate applications of the interrelation and interdependence of the sciences.

(f) Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem-solving procedures.

(g) Visual and performing arts, including art, music, or drama, with emphasis upon development of aesthetic appreciation and the skills of creative expression.

(h) Applied arts, including instruction in the areas of consumer and homemaking education, industrial arts, general business education, or general agriculture.

(i) Career technical education designed and conducted for the purpose of preparing youth for gainful employment in the occupations and in the numbers that are appropriate to the personnel needs of the state and the community served and relevant to the career desires and needs of the pupils.

(j) Automobile driver education, designed to develop a knowledge of the provisions of the Vehicle Code and other laws of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness and consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe operation of motor vehicles. A course in automobile driver education shall include education in the safe operation of motorcycles.

(k) Other studies as may be prescribed by the governing board.

SEC. 39. Section 51224 of the Education Code is amended to read:

51224. The governing board of any school district maintaining a high school shall prescribe courses of study designed to provide the skills and knowledge required for adult life for pupils attending the schools within its school district. The governing board shall prescribe separate courses of study, including, but not limited to, a course of study designed to prepare prospective pupils for admission to state colleges and universities and a course of study for career technical training.

SEC. 40. Section 51225.3 of the Education Code is amended to read:

51225.3. (a) Commencing with the 1988–89 school year, no pupil shall receive a diploma of graduation from high school who, while in grades 9 to 12, inclusive, has not completed all of the following:

(1) At least the following numbers of courses in the subjects specified, each course having a duration of one year, unless otherwise specified.

(A) Three courses in English.

(B) Two courses in mathematics.

(C) Two courses in science, including biological and physical sciences.

(D) Three courses in social studies, including United States history and geography; world history, culture, and geography; a one-semester course in American government and civics, and a one-semester course in economics.

(E) One course in visual or performing arts or foreign language. For the purposes of satisfying the requirement specified in this subparagraph, a course in American Sign Language shall be deemed a course in foreign language.

(F) Two courses in physical education, unless the pupil has been exempted pursuant to the provisions of this code.

(2) Other coursework as the governing board of the school district may by rule specify.

(b) The governing board, with the active involvement of parents, administrators, teachers, and pupils, shall adopt alternative means for pupils to complete the prescribed course of study which may include practical demonstration of skills and competencies, supervised work experience or other outside school experience, career technical education classes offered in high schools, courses offered by regional occupational centers or programs, interdisciplinary study, independent study, and credit earned at a postsecondary institution. Requirements for graduation and specified alternative modes for completing the prescribed course of study shall be made available to pupils, parents, and the public.

SEC. 41. Section 51225.4 of the Education Code is amended to read:

51225.4. The governing board of each elementary school district shall certify to the Superintendent of Public Instruction that it has adopted a policy to implement a course of instruction that sufficiently prepares the pupils in the district for the course of study required in Section 51225.3. This certification shall be submitted to the superintendent at the same time the district submits its apportionment reports.

SEC. 42. Section 51226 of the Education Code is amended to read:

51226. The Superintendent of Public Instruction shall coordinate the development, on a cyclical basis, of model curriculum standards for the course of study required by Section 51225.3 and for a career technical education course of study necessary to assist school districts with complying with subdivision (b) of Section 51228. The superintendent shall set forth these standards in terms of a wide range of specific competencies, including higher level skills, in each academic subject area. The superintendent shall review currently available textbooks in conjunction with the curriculum standards. The superintendent shall

seek the advice of classroom teachers, school administrators, parents, postsecondary educators, and representatives of business and industry in developing these curriculum standards. The superintendent shall recommend policies to the State Board of Education for consideration and adoption by the board. The State Board of Education shall adopt these policies no later than January 1, 1985. However, neither the superintendent nor the board shall adopt rules or regulations for course content or methods of instruction.

The superintendent shall, to the extent applicable, incorporate the integration of career technical and academic education into the development of curriculum standards for career technical education courses. The standards for a career technical education course of study shall be adopted no later than May 1, 1991.

SEC. 43. Section 51412 of the Education Code is amended to read:

51412. No diploma, certificate or other document, except transcripts and letters of recommendation, shall be conferred on a pupil as evidence of completion of a prescribed course of study or training, or of satisfactory attendance, unless the pupil has met the standards of proficiency in basic skills prescribed by the governing board of the high school district, or equivalent thereof.

SEC. 44. Section 52270 of the Education Code, as added by Chapter 78 of the Statutes of 2000, is amended to read:

52270. The Education Technology Grant Program is hereby established to provide one-time grants to school districts and charter schools for purposes of acquiring computers for instructional purposes at public schools. The Office of the Secretary for Education shall administer the application process for the award of grants.

(a) The first priority for the use of the funds is to ensure that high school pupils in schools offering three or fewer advanced placement courses have access to advanced placement courses online. Grants awarded for the first priority may be expended to purchase or lease computers and related equipment and for wiring or infrastructure necessary to achieve connectivity to on-line advanced placement courses.

(b) The second priority for the use of the funds is to increase the number of computers available to all other public schools that offer instruction in kindergarten or any of grades 1 to 12, inclusive. Grants awarded for the purposes of the second priority shall be awarded at the school district level and shall be based on a ratio of pupils per computer, as determined by the Office of the Secretary for Education. A school district that receives a grant shall award the funds to its schools that have the highest number of pupils per computer. Each education technology grant awarded based on the second priority shall only be used for the purchase or lease of computers including system configuration,

software, and instructional material. The grant amount awarded to each school district or charter school for the second priority shall be determined by the Office of the Secretary for Education.

(c) All funds awarded pursuant to this section shall be used solely to purchase or lease equipment and related materials for instructional purposes and limited to classroom, library, or technology and media centers in order to provide access to on-line advanced placement courses for pupil and increase the number of computers per pupil. These grant funds are to supplement, not supplant, existing local, state, and federal education technology funds, including Digital High School funds.

(d) To receive a grant pursuant to this section, school districts and charter schools shall have developed an education technology plan or shall develop a plan with the assistance of the California Technology Assistance Project specifically for the use of the funds available pursuant to this section within 90 days after submission of the application for a grant pursuant to this chapter. The plan shall address the use of these and other technology funds to ensure they are used effectively and in a manner consistent with other education technology available at the schoolsite. School districts and charter schools that choose to lease equipment shall include in their technology plan a payment schedule and shall identify the funding source or sources for lease payments over the life of the lease, including, but not limited to, establishing a technology leasing account and amortizing the available state funding over the term of the lease, if appropriate. In addition, the term of the lease shall be no longer than four years unless authorized at local discretion, in which case the lease or purchase shall be funded at local expense. A school district or charter school with an existing certified or approved education technology plan developed pursuant to other provisions of law may utilize the existing plan for the purposes of this program but shall, if necessary, amend that plan to meet the requirements of this subdivision if the school district or charter school chooses to lease the computers.

(e) School districts and charter schools may purchase or lease computers, related equipment and materials, and other goods and services using any statewide or cooperative contracts, schedules, or other agreements, established by the Department of General Services.

(f) Funding for the purposes of this section is contingent on an appropriation made in the annual Budget Act or other legislation, or both.

(g) Funds appropriated to carry out this section in the 2000–01 fiscal year shall only be available to high schools, or charter schools, that serve any of grades 9 to 12, inclusive.

(h) The Secretary for Education may adopt emergency regulations governing the method of allocating funds for the Education Technology Grant Program for the 2000–01 fiscal year.

SEC. 45. The heading of Chapter 9 (commencing with Section 52300) of Part 28 of the Education Code is amended to read:

CHAPTER 9. CAREER TECHNICAL EDUCATION

SEC. 46. Section 52300 of the Education Code is amended to read:

52300. In enacting this article, it is the intent of the Legislature to provide qualified students with the opportunity to attend a technical school or enroll in a career technical or technical training program, regardless of the geographical location of their residence in a county or region. The Legislature hereby declares that a regional occupational center will serve the state and national interests in providing career technical and technical education to prepare students for an increasingly technological society in which generalized training and skills are insufficient to prepare high school students and graduates, and out-of-school youth and adults for the many employment opportunities which require special or technical training and skills. The Legislature also declares that regional occupational centers will enable a broader curriculum in technical subjects to be offered, and will avoid unnecessary duplication of courses and expensive training equipment, and will provide a flexibility in operation which will facilitate rapid program adjustments and meeting changing training needs as they arise.

It is recognized by the Legislature that career technical programs may achieve great flexibility of planning, scope and operation by the conduct of these programs in a variety of physical facilities at various training locations.

It is the further intent of the Legislature that regional occupational centers and programs provide career technical and occupational instruction related to the attainment of skills so that trainees are prepared for gainful employment in the area for which training was provided, or are upgraded so they have the higher level skills required because of new and changing technologies or so that they are prepared for enrollment in more advanced training programs.

SEC. 47. Section 52301 of the Education Code is amended to read:

52301. (a) The county superintendent of schools of each county, with the consent of the State Board of Education, may establish and maintain, or with one or more counties may establish and maintain, at least one regional occupational center, or regional occupational program, in the county to provide education and training in career technical courses. The governing boards of any school districts maintaining high schools in the county may, with the consent of the State Board of Education and of the county superintendent of schools, cooperate in the establishment and maintenance of a regional occupational center or program, except that if a school district also

maintains 500 or more schools, its governing board may establish and maintain one or more regional occupational centers or programs, without those restrictions. A regional occupational center or program may be established by two or more school districts maintaining high schools through the use of the staff and facilities of a community college or community colleges serving the same geographic area as the school districts maintaining the high schools, with the consent of the State Board of Education and the county superintendent of schools.

The establishment and maintenance of a regional occupational center or program, by two or more school districts may be undertaken pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code. In a regional occupational center or program, the functions of the county auditor undertaken pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code shall be performed by the county superintendent of schools in a county in which the board of supervisors has transferred educational functions from the county auditor to the county superintendent of schools pursuant to Sections 42649, as added by Chapter 533 of the Statutes of 1977, and 85265.5. If a school district or school districts establish and maintain a regional occupational center or program, pursuant to this chapter, the county superintendent of schools may, with the consent of the State Board of Education, establish and maintain a separate regional occupational center or centers or program or programs.

(b) Notwithstanding other provisions of this section, a single school district located in a class 1 county, as defined in Section 1205, and having an average daily attendance of 50,000 or more, or a single school district located in a class 2 county, as defined in Section 1206, and having an average daily attendance of 100,000 or more, may apply to the State Board of Education through the county superintendent of schools for permission to establish a regional occupational center or program. Except as provided in subdivision (c), the State Board of Education shall, within 90 days of receipt of an application, prescribe a procedure whereby the district may establish a center or program in accordance with its application and in compliance with the provisions of the State Plan for Career Technical Education. The county superintendent of schools may supervise establishment of the center or program.

(c) The State Board of Education may disapprove a waiver application submitted by a single school district pursuant to Article 3 (commencing with Section 33050) of Chapter 1 of Part 20 for permission to establish a regional occupational center or program which does not meet the requirements of this section if the board determines that the establishment of the center or program would have an adverse

effect upon existing regional occupational centers or programs located in school districts which are contiguous to the applicant school district.

The State Board of Education shall establish criteria to measure adverse effect. The criteria shall include, but not be limited to, hardship on (1) districts operating regional occupational centers or programs which are contiguous to the applicant district and (2) students of districts operating regional occupational centers or programs which are contiguous to the applicant district.

(d) Notwithstanding any other provision of law, any regional occupational center or program operated by a single district under provisions of Section 33050 shall be granted permanent status if the single district has previously been granted two waivers from the State Board of Education to operate a single district regional occupational center or program and the single district maintains at least three but not more than five comprehensive high schools within the district. The revenue limit for a regional occupational center or program established under this subdivision shall be the lower of either: (1) the revenue limit under which the center or program operates as of January 1, 1985, or (2) the district's revenue limit as of January 1, 1985, except that this revenue limit shall be subject to annual percentage cost-of-living adjustments provided for regional occupational centers and programs. The governing board of the school district shall retain authority to decide whether or not to operate the regional occupational center or program under this subdivision.

SEC. 48. Section 52302 of the Education Code is amended to read:

52302. The school or community college district or districts, or county superintendent or superintendents, sponsoring the regional occupational center or program shall conduct a job market study in the labor market area in which they propose to establish a regional occupational center or program. The study shall use the State-Local Cooperative Labor Market Information Program established in Section 10533 of the Unemployment Insurance Code, or if this program is not available in the labor market area, other available sources of labor market information. The study shall include a California Occupational Information System supply analysis of existing career technical and occupational training programs maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for trainees in the proposed regional occupational centers and programs justifies the establishment of the proposed courses of instruction.

SEC. 49. Section 52302.3 of the Education Code is amended to read:

52302.3. (a) Every career technical course or program offered by a school district or districts or county superintendent or superintendents

sponsoring a regional occupational center or program shall be reviewed every two years by the appropriate governing body to assure that each course or program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any course or program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing body shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local private industry council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) This section shall apply to each course or program commenced subsequent to the effective date of this section.

SEC. 50. Section 52302.5 of the Education Code is amended to read:

52302.5. A regional occupational center or regional occupational program shall:

(a) Provide individual counseling and guidance in career technical matters.

(b) Provide a curriculum which includes skill training in occupational fields having current and future needs for the training.

(c) Provide an opportunity for students to acquire entry level career technical skills which may lead to a combination work-study schedule.

(d) Provide for the upgrading of the career technical skills of students and for retraining where necessary.

(e) Maintain a pupil-teacher ratio which will enable students to achieve optimum benefits from the instructional program.

(f) Assign the highest priority in services to youth from the age of 16 to 18 years, inclusive.

SEC. 51. Section 52302.7 of the Education Code is amended to read:

52302.7. A regional occupational center may provide, on an individual referral basis, academic and personal development instruction for adult students enrolled in a career technical education course conducted by the regional occupational center when it is determined that it is essential for this instruction to be given to ensure the employability of the adult student.

SEC. 52. Section 52302.9 of the Education Code is amended to read:

52302.9. Regional occupational centers and programs may jointly establish, operate, and share the enrollments and costs of career technical education instruction with adult education programs offered by school districts serving the same geographic area. These programs shall be approved by the State Board of Education and the county superintendent of schools and shall be subject to guidelines established by the Superintendent of Public Instruction. These programs shall also be funded at the adult revenue limit amount provided pursuant to Section 42238.

SEC. 53. Section 52303 of the Education Code is amended to read:

52303. ''Regional occupational program,'' as used in this chapter, means a career technical or technical training program which meets the criteria and standards of instructional programs in regional occupational centers and which is conducted in a variety of physical facilities which are not necessarily situated in one single plant or site.

SEC. 54. Section 52305 of the Education Code is amended to read:

52305. A regional occupational center or regional occupational program may:

(a) Be established pursuant to Section 52301 to provide day, including Saturday and Sunday, and evening full-time and part-time career technical education programs for minors and adults, the year around.

(b) Include within its career technical training programs, the establishment and operation of a sheltered workshop.

(c) Permit the establishment and operation of business, commercial, trade, manufacturing, or construction activities as will best serve the aims and purposes of career technical education. These activities shall also permit the sale of products or services to private or public corporations or companies, or to the general public.

SEC. 55. Section 52309 of the Education Code is amended to read:

52309. (a) The curriculum initially provided by a regional occupational center or regional occupational program upon commencing operation shall be subject to the approval of the department and shall comply with all requirements and standards set forth in the State Plan for Career Technical Education. The department shall approve regional occupational centers only after giving due consideration to career technical education opportunities offered by community colleges serving the same geographical area. The State Board of Education shall adopt rules and regulations establishing guidelines and criteria for differentiating between courses appropriate for regional occupational centers or regional occupational programs and those appropriate for high schools.

(b) The Superintendent of Public Instruction shall prepare and distribute by April 1, 1977, and thereafter maintain, a detailed handbook

for use by the local educational agencies and regional councils established pursuant to Section 8020. The handbook shall contain course approval criteria, job market study criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

(c) Notwithstanding subdivision (a), the curriculum provided by a regional occupational center or program shall not be subject to the approval of the department as to any curriculum that is certified, by resolution of the governing body of the regional occupational center or program, to comply with the course approval criteria set forth in the handbook described in subdivision (b).

SEC. 56. Section 52329 of the Education Code is amended to read:

52329. The governing board of a school district located in a county, or the county superintendent of schools maintaining a regional occupational program in a county, any of the boundaries of which are contiguous to the State of Arizona, may enter into an agreement with a public or private educational agency located in that state to provide to students living in the district and enrolled in a regional occupational program, career technical or technical training which, due to geographical isolation, is not otherwise available to these students.

The program of training at the public or private educational agency shall be approved by the Superintendent of Public Instruction of California and shall conform to the California State Plan for Career Technical Education.

The attendance of pupils receiving career technical or technical training at a public or private educational agency as authorized by this section shall be included in the computation of average daily attendance as prescribed by Sections 52324 and 52325, and shall be credited to the county school service fund of the county of residence. In no event, however, shall the county school service fund be credited with more than one unit of average daily attendance per calendar year on account of a pupil participating in a program authorized by this section.

SEC. 57. Section 52331 of the Education Code is amended to read:

52331. A regional occupational program or center, established pursuant to Section 52301, may contract with a community college district to provide career technical education instruction and services for students enrolled, or seeking to enroll, in a regional occupational center or program. The instruction and services shall comply with the requirements and standards for regional occupational programs and centers as set forth in the State Plan for Career Technical Education.

SEC. 58. Section 52334 is added to the Education Code, to read:

52334. Indirect costs charged to regional occupational centers and programs may not exceed the lesser of the school district or county office

of education, as appropriate, prior year indirect cost rate as approved by the State Department of Education.

The indirect costs charged by county offices of education and school districts that provide regional occupational centers and programs services on behalf of the county office of education or joint powers authority, when added together, may not exceed the indirect cost rate approved by the State Department of Education for the county office of education or the school district, whichever is higher.

Revenue limit funds apportioned to a county office of education or school district for regional occupational centers and programs must be expended on programs and services offered by the regional occupational centers and programs.

SEC. 59. Section 52336 of the Education Code is amended to read:

52336. (a) Any business, trade or professional association, union, or state or local governmental agency operating within this state may establish and operate, under the auspices of the local school district, a career preparatory program within this state that meets the requirements of this article.

(b) As part of a career preparatory program, an entity establishing and operating the program shall develop and implement a course of instruction for all pupils enrolled in the program that satisfies the requirements of Section 51225.3 applicable to grades 11 and 12.

(c) Subject to the development of the course of instruction delineated in subdivision (b) and to continuing certification by the State Department of Education, an entity establishing and operating a career preparatory program may propose and implement a program that is designed to provide on-the-job training and instruction in specific career technical skills to prepare students for future employment.

(d) An entity establishing and operating a career preparatory program shall present pupils who have successfully completed all aspects of the program with a certificate of completion that shall supplement a high school diploma.

SEC. 60. Section 52336.5 of the Education Code is amended to read:

52336.5. (a) A private entity establishing a career preparatory program pursuant to this article shall not be eligible for any moneys from the state or any school district.

(b) An entity establishing a career preparatory program pursuant to Section 52336 may contract for assistance in the development or administration of that program with one or more of the following:

(1) A community college district.

(2) A school district that operates an adult education program.

(3) A regional occupational center or program.

(4) Any other public career technical education program.

SEC. 61. Section 52342 of the Education Code is amended to read:

52342. In the implementation of this article, the State Department of Education shall, on a regular basis, advise and consult with representatives of the Employment Development Department, the Board of Governors of the California Community Colleges, the California Postsecondary Education Commission, the University of California, the Chancellor of the California State University, the Commission on Teacher Credentialing, the Department of Industrial Relations, the Department of Consumer Affairs, the California Advisory Council on Career Technical Education and Technical Training, and the State Personnel Board.

SEC. 62. The heading of Article 3 (commencing with Section 52350) of Chapter 9 of Part 28 of the Education Code is amended to read:

Article 3. Precareer Technical Education

SEC. 63. Section 52350 of the Education Code is amended to read:

52350. It is the intent and purpose of the Legislature by the enactment of this chapter to curtail the growing rate of pupil dropouts or premature enrollment terminations in the public elementary and secondary schools, by authorizing special emphasis to be given precareer technical training courses of study for the benefit of pupils who are oriented toward career technical employment and who are potential school dropouts, have demonstrated aptitudes for precareer technical training, and who voluntarily elect to undertake a concentration of educational effort in precareer technical training and whose parents or guardian consents to that training.

SEC. 64. Section 52351 of the Education Code is amended to read:

52351. The county superintendent or the governing board of any school district, as the case may be, maintaining any of grades 7, 8, and 9, may, upon application to, and approval by, the Superintendent of Public Instruction, establish a program having the following essential elements:

(a) Identification, by appraisal and recommendation of teachers and other school authorities, aptitude tests, and other tests and means as may be authorized by the State Board of Education, of pupils whose academic attainment level and behavior as school pupils indicate that in all probability they will terminate public school enrollment prior to completion of grade 12, but who demonstrate aptitude for one or more types of precareer technical training afforded in the schools of the district.

(b) Precareer technical courses of study arranged and conducted in a manner as will permit pupils to concentrate educational effort in those courses of study pursuant to this chapter.

(c) Counseling and guidance procedures which will effectuate the purposes of this chapter.

The county superintendent shall have primary authority to establish the program within his or her county. Should he or she fail, for any reason, to establish or initiate action for the establishment of a program after receiving a written request therefor from the governing board of a school district, the governing board shall have full authority to establish a program.

SEC. 65. Section 52353 of the Education Code is amended to read:

52353. Any pupil coming within the provisions of subdivision (a) of Section 52351 shall, as a matter of free personal choice, and with the consent of the pupil's parent or guardian, without duress or coercion, be authorized to elect to enroll in precareer technical courses for which the pupil possesses demonstrated aptitudes, as follows:

(a) In grade 7, one course of study in each semester of the school year.

(b) In grade 8, two courses of study in each semester of the school year, provided that the pupil successfully completed any course of study in which enrolled under subdivision (a) during the preceding school year.

(c) In grade 9, three courses of study in each semester of the school year, provided that the pupil successfully completed any course of study in which enrolled under subdivision (b) during the preceding school year.

SEC. 66. Section 52354 of the Education Code is amended to read:

52354. It shall be unlawful, for the governing board of a school district, a county board of education, a county superintendent of schools, or any officer or employee whatever of the public school system, to willfully:

(a) Cause, or aid or abet in the forced or coerced enrollment of a public school pupil in any precareer technical course of study as a disciplinary measure, whether pursuant to this chapter or otherwise.

(b) Cause, or aid or abet in effecting any distinction in the form, appearance, or content of any diploma issued upon graduation from elementary school or high school based on a pupil's having enrolled in a program under this chapter as distinguished from the regular educational programs of the district involved.

SEC. 67. The heading of Article 4 (commencing with Section 52370) of Chapter 9 of Part 28 of the Education Code is amended to read:

Article 4. High School Career Technical Courses

SEC. 68. Section 52370 of the Education Code is amended to read:

52370. The governing board of any high school district may provide for the maintenance on Saturday of special day and evening classes in

career technical training authorized and provided for by any program of national defense of the federal government, or any agency thereof, acting through the State Department of Education.

No apportionments from state funds based upon average daily attendance in special day or evening classes, whether maintained on Saturday or other days, shall be made where the total cost of the classes is borne by the federal government, or any agency thereof.

SEC. 69. Section 52371 of the Education Code is amended to read:

52371. Pilot programs may be established by school districts to provide for the maintenance on Saturday of classes in career technical training, upon the approval of the Superintendent of Public Instruction. Career technical training may be a part of, but is not limited to, a program of national defense of the federal government, or any agency thereof.

No apportionments to districts from state funds based upon average daily attendance in these classes, whether maintained on Saturday or other days, shall be made where the total cost of the classes is borne by the federal government, or any agency thereof.

SEC. 70. Section 52372 of the Education Code is amended to read:

52372. The governing board of any high school district, subject to the provisions of this code relating to courses of study for high schools, the governing board of any joint powers regional occupational center or program, or the county superintendent of schools which conducts any county-operated regional occupational center or program, may establish and maintain, in connection with any high school or regional occupational center or program under its or his or her jurisdiction, cooperative career technical education programs or community classrooms as part of a career technical education course in accordance with rules and regulations prescribed by the Superintendent of Public Instruction.

SEC. 71. Section 52372.1 of the Education Code is amended to read:

52372.1. (a) The Superintendent of Public Instruction shall adopt rules and regulations for cooperative career technical education programs and community classrooms. The rules and regulations shall include, but need not necessarily be limited to, all of the following:

(1) Selection and approval of work and training stations.

(2) Related classroom instruction.

(3) Supervision of students while in training.

(4) Joint venture training agreements and plans.

(5) Student teacher ratios.

(6) Paid and unpaid on-the-job experiences.

(7) Credit for participation in cooperative career technical education programs and community classrooms.

(b) As used in this section, ''cooperative career technical education programs'' includes cooperative agreements between schools and employers to provide students with paid on-the-job experiences, as well as career technical education instruction contributing to the student's education and employability.

(c) As used in this section, ''community classrooms'' includes instructional methodologies which are part of a career technical education course, and which may utilize the facilities and equipment of a public agency or private business to provide students the opportunity to expand competencies developed in a career technical course in unpaid on-the-job experiences.

(d) Joint venture agreements shall be entered into between the director and the management of the community classroom site to ensure that students will be provided, through unpaid on-the-job experiences, the opportunity to expand the competencies developed in the classroom instruction portion of their training.

Each instructor, in cooperation with the business or agency in which the student will be placed, shall develop an individualized training plan for each pupil enrolled in a community classroom.

(e) All statutes and regulations applicable to minors in employment relationships apply to cooperative career technical education programs and to community classrooms.

(f) For purposes of this section, ''public agency'' means any public agency capable of providing unpaid on-the-job experience meeting all of the following requirements:

(1) The on-the-job experiences are in occupations for which there is a local job market.

(2) The on-the-job experiences are equivalent to those which could be received for each specific occupational area as if they were held at a private business site.

SEC. 72. Section 52373 of the Education Code is amended to read:

52373. (a) The governing board of any high school district maintaining an agriculture course may transport pupils, instructors, or supervisors of classes to and from any classes or places where the work of the classes is being done, whether within or without the district, in the same manner and subject to the same limitations as in transporting pupils to and from school.

(b) No pupil shall be required to pay any fee or charge for transportation associated with activities of career technical student organizations which are a part of a career technical class or course of instruction offered for credit, when those activities are integral to assisting the pupil to achieve the career objectives of the class or course.

SEC. 73. Section 52375 of the Education Code is amended to read:

52375. No pupil shall be required to pay any fee or charge for enrollment or participation in activities of career technical student organizations which are a part of a career technical class or course of instruction offered for credit, when those activities are integral to assisting the pupil to achieve the career objectives of the class or course. This section shall apply to activities which occur during or outside of the regular schoolday.

This section does not constitute a change in, but is declaratory of, existing law. Furthermore, this section shall not be construed to authorize a fee or charge for any pupil to enroll or participate in any activity other than career technical student organizations.

SEC. 74. Section 52376 of the Education Code is amended to read:

52376. (a) The governing board of any school district that maintains a high school may expend supplemental funding apportioned pursuant to Section 54761 for the purposes of this section. Any governing board that expends supplemental grant funding pursuant to this section or accepts other funds made available for purposes of this section shall do all of the following:

(1) By May 1, 1991, establish procedures and policies required pursuant to subdivision (b).

(2) By July 1, 1992, establish a program required pursuant to subdivision (c).

(b) The governing board of each school district that elects to utilize supplemental grant funding or accept other funds for the purposes of this section shall do the following:

(1) Establish district policies and procedures to systematically review career technical education classes offered by the district to determine the degree to which each class may offer an alternative means for completing and receiving credit for specific portions of the district's prescribed course of study to graduate from high school. The governing board shall ensure that those classes are equivalent, in terms of content and rigor, to the courses prescribed in subdivision (a) of Section 51225.3.

(2) Establish district policies and procedures to compare, not less than every three years, the local curriculum, course content, and course sequence of career technical education programs in the district with the state model curriculum standards for career technical education.

(c) Each governing board expending supplemental grant funding or accepting other funds made available for the purposes of this section shall develop and implement, in consultation with the regional occupational center or program and community college serving the geographic area of the school district, a career technical education program that meets at least the following criteria:

(1) Provides a series of career technical education programs, each of which offers a sequence of courses leading to specific competencies that

will enable pupils to manage personal and work life and attain entry level employment in business or industry upon graduation from high school. The plan to provide a series of career technical education programs shall be consistent with local agreements with regional occupational centers and programs and community colleges regarding the responsibilities for the provision and articulation of services among those local agencies. Each governing board shall also develop and implement plans for articulation of career technical courses, or both career technical and technical courses, with the community colleges to extend the sequence of courses through grades 13 and 14.

(2) Conducts or obtains access to needs data and assessment of local business and industry to ensure that the career technical education programs offered will prepare pupils in competencies for which employment opportunities exist.

(3) Provides counseling and guidance services to pupils to help them meet all necessary requirements for high school graduation and make informed career preparation choices. Counseling and guidance services provided to promote the purposes of this section may include counseling for pupils in grades 6 to 12, inclusive.

(4) Involves business and industry in cooperative projects with the schools to provide work experience opportunities, instructors from business and industry, assistance with needs assessments and program evaluations, and access to business and industry employment placement services.

(5) Provides access to employment placement services to help graduating pupils obtain employment.

(6) Includes a system of data collection to report annually to the governing board on the success or failure of each career technical education program in terms of all of the following:

(A) Pupils achieving the desired competencies.

(B) Pupils securing employment, particularly in jobs related to the area of their career technical preparation.

(C) Pupils proceeding to advanced education and training at the postsecondary level.

(D) Number and types of career technical classes offered and the number of those classes that qualify as alternative means to complete the prescribed course of study pursuant to subdivision (b) of Section 51225.3.

(E) Number of pupils enrolled in career technical classes.

SEC. 75. Section 52377 is added to the Education Code, to read:

52377. Any reference to ''vocational'' education, skill training, instruction, or training in this code shall be deemed to be a reference to ''career technical'' education, skill training, instruction, or training.

SEC. 76. Section 52381 of the Education Code is amended to read:

52381. The Legislature finds that it is urgently necessary to reduce the continuing high level of unemployment among the youth and young adults by broadening and strengthening the existing career technical education programs to provide them with the necessary work skills in order that they will be equipped to participate in a meaningful manner in our ever increasingly technical society.

It is the intent of the Legislature by the provisions of this article to afford a means whereby school districts may broaden and strengthen the existing career technical education programs and to provide the districts with necessary financial support to enable them to implement career technical training and work programs during the summer months for the unemployed youth and young adults so that they may be trained in marketable work skills and earn funds as may be necessary to enable them to continue their education.

SEC. 77. Section 52382 of the Education Code is amended to read:

52382. A program of summer career technical and technical education may be established pursuant to this article by the governing board of any school district maintaining one or more high schools. Pupils who have completed grades 9 to 12, inclusive, may be permitted to participate in a program.

Summer career technical and technical education programs shall consist of training and instruction in any skills and crafts in which ample opportunities for gainful employment are to be found. The program may include work experience involving the gainful employment of pupils. The provisions of Article 2 (commencing with Section 1940) of Chapter 2 of Part 7 of the Labor Code, limiting the employment of aliens by public agencies shall not be applicable to the employment of pupils under this article.

SEC. 78. Section 52383 of the Education Code is amended to read:

52383. Wages earned by pupils participating in a program of summer career technical and technical education, shall be paid weekly, or, if not reasonably possible, biweekly.

SEC. 79. Section 52384 of the Education Code is amended to read:

52384. Any program of summer career technical and technical education established pursuant to this article shall be subject to the prior approval of the State Department of Education, and no average daily attendance of pupils in such a program shall be credited to a district unless the program has been approved and is conducted pursuant to the rules, regulations, and standards prescribed by the department. School districts desiring to participate under the provisions of this article shall submit to the department applications which shall include plans for the establishment of a summer career technical and technical education program, and describing in detail its proposed content and operation.

SEC. 80. Section 52388 of the Education Code is amended to read:

52388. The department shall adopt rules and regulations that are necessary to implement the provisions of this article. The rules and regulations shall include standards for the career technical and technical education programs provided for under this article.

SEC. 81. The heading of Article 7 (commencing with Section 52450) of Chapter 9 of Part 28 of the Education Code is amended to read:

Article 7. Agricultural Career Technical Education

SEC. 82. Section 52450 of the Education Code is amended to read:

52450. The Legislature of the State of California recognizes that agriculture is the most basic and singularly important industry in the state, that agriculture is of central importance to the welfare and economic stability of the state, and that the maintenance of this vital industry requires a continued source of trained and qualified individuals for employment in agriculture and agribusiness. The Legislature hereby declares that it is within the best interests of the people of the State of California that a comprehensive career technical education program in agriculture be created and maintained by the state's school system in order to ensure an adequate supply of trained and skilled individuals and to ensure appropriate representation of racial and ethnic groups in all phases of the industry. For this purpose, the Legislature affirms that a state program for agricultural career technical education shall be established. It is the intent of the Legislature that a state program for agricultural education shall be a part of the curriculum of the state school system and made readily available to all school districts who may, at their option, include programs in career technical education in agriculture as a part of the curriculum of that district.

SEC. 83. Section 52452 of the Education Code is amended to read:

52452. (a) There is hereby created within the State Department of Education an agricultural career technical education unit to assist school districts in the establishment and maintenance of educational programs established pursuant to the provisions of this article.

(b) The staffing of the unit shall at all times be comprised of an appropriate number of full-time employees; provided, that any decrease in federal support of this staffing unit shall be applied in direct proportion to all other staffs so funded, including the State Supervisor of Agricultural Career Technical Education who shall, under the direction of the Superintendent of Public Instruction, assume responsibility for the administration of the state program adopted under this article throughout the public school system as well as the articulation of the state program to the requirements and mandates of federally assisted career technical education.

(c) An appropriate number of employees shall serve as program consultants in agricultural career technical education and shall be available to provide assistance to local school districts. To the extent that it is possible, the program consultants shall be geographically located in those areas most readily accessible to the school districts they assist. At least one consultant shall be responsible for the coordination of the state program. At least one consultant shall be responsible for the coordination of the activities of student agricultural organizations and associations.

(d) The State Department of Education shall accomplish the staffing of the agricultural career technical education unit in compliance with this article by reassigning priorities in staff assignments within the department in a manner that will not result in new costs to the state as a consequence.

SEC. 84. Section 52453 of the Education Code is amended to read:

52453. (a) The State Director of Career Technical Education shall establish and convene an Agricultural Advisory Committee representative of the various and diverse areas of the agricultural industry in California.

(b) The committee shall be composed of the following:

(1) A representative from a university conducting teacher training in career technical agriculture.

(2) A representative from a community college conducting career technical education in agriculture.

(3) A representative from a high school conducting a program of career technical education in agriculture.

(4) A representative from a school conducting general education in agriculture.

(5) A parent of a pupil enrolled in career technical education in agriculture.

(6) Nine other individuals representing diverse agricultural interests from various geographic locations in the state.

The State Supervisor of Agricultural Education shall serve as the committee consultant.

(c) It shall be the purpose of this committee to advise, in an ongoing manner, the State Supervisor of Agricultural Education, the Superintendent of Public Instruction, and the State Board of Education on policy matters pertaining to the state program of agricultural career technical education. The advice of the committee shall include, but not be limited to, the development of a curriculum and a strategy for the purpose of establishing a source of trained and qualified individuals in agriculture, a strategy for articulating the state program in agricultural career technical education throughout the state school system, and a

consumer education outreach strategy regarding the importance of agriculture in California.

(d) The committee shall serve without compensation, including travel and per diem and shall operate in accordance with the established policies of the State Department of Education.

SEC. 85. Section 52454 of the Education Code is amended to read:

52454. (a) The curriculum of school districts that choose to participate in the state program of agricultural career technical education shall include all of the following components:

(1) Organized classes in the study of agricultural science and technology.

(2) A student-supervised occupational experience program in agriculture.

(3) A program of leadership, organization, and personal development.

(b) Student learning activity developed to supplement these components shall be considered curricular and shall contribute to the grade of the participating student when those activities are integral to assisting the student to achieve the career objective of the class or course.

It is the intent of the Legislature that opportunities are provided for teachers to be employed on a 12-month basis in order to maintain supervised occupational experience on a year-round basis for students enrolled in agricultural career technical programs.

SEC. 86. The heading of Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28 of the Education Code is amended to read:

Article 7.5. Agricultural Career Technical Education Incentive Program

SEC. 87. Section 52460 of the Education Code is amended to read:

52460. The governing board of a school district which operates an agricultural career technical education program may apply to the Superintendent of Public Instruction for an incentive grant, pursuant to this article, for the purpose of purchasing or leasing agricultural career technical education equipment.

SEC. 88. Section 52461 of the Education Code is amended to read:

52461. The Superintendent of Public Instruction shall award grants to applicant school districts which meet the following requirements:

(a) The school district shall contribute an amount of funds equal to the amount of the grant to the purchase or lease of equipment for use in agricultural career technical education programs.

(b) The school district shall certify to the Superintendent of Public Instruction that the grant funds received and the matching funds contributed by the district shall be used solely for the purpose of

purchasing or leasing equipment for use in agricultural career technical education programs.

SEC. 89. Section 52461.5 of the Education Code is amended to read:

52461.5. (a) For purposes of this article, ''agricultural career technical education equipment'' shall mean any nonsalary item of expenditure, including, but not limited to, capital outlay, for approved agricultural career technical education programs.

(b) Notwithstanding any other provision of law, any requirement of this article or any other provision chaptered during the 1983–84 fiscal year that school districts contribute local matching funds to be eligible for state funds for nonsalary costs of career technical agriculture programs may be waived by the Superintendent of Public Instruction if he or she finds that a matching requirement would create a financial hardship for any school district.

SEC. 90. The heading of Article 9 (commencing with Section 52485) of Chapter 9 of Part 28 of the Education Code is amended to read:

Article 9. Home Economics Careers and Technology Career Technical Education

SEC. 91. Section 52485 of the Education Code is amended to read:

52485. (a) The Legislature recognizes that home economics career technical education includes two distinct programs, consumer home economics education which is crucial to the economic and social well-being of individuals and families, and home economics-related occupation programs, which provide a continued source of trained and qualified individuals for employment in various fields, including child development and education, consumer services, fashion design, manufacturing and merchandising, food science, dietetics and nutrition, food service and hospitality, hospitality, tourism and recreation, interior design, furnishings, and maintenance. These industries are of central importance to the economic growth and development of the state, and their maintenance require a continued source of trained and qualified individuals in order to maintain a productive workforce.

(b) The Legislature hereby declares that it is in the best interests of the people of the State of California that a comprehensive home economics careers and technology career technical program be created and maintained by the public school system to include instruction in consumer home economics education, which prepares individuals for effective personal life management and to be a member of a well-functioning family, and instruction in home economics related occupations education, in order to ensure both an adequate supply of

trained and skilled individuals, and appropriate representation of racial and ethnic groups in all phases of the industries.

(c) For this purpose, the Legislature affirms that a program of home economics career technical education shall be a part of the curriculum of the public school system and made readily available to all school districts which may, at their option, include programs in career technical home economics education as a part of the curriculum of that district.

SEC. 92. Section 52487 of the Education Code is amended to read:

52487. (a) There is hereby created within the State Department of Education the Home Economics Careers and Technology Career Technical Education Unit, to be staffed by qualified home economics education-trained personnel, to assist school districts in the establishment and maintenance of the educational programs provided for by this article.

(b) The staffing of the unit shall be at least 3.3 personnel-years.

(c) The State Supervisor of the Home Economics Careers and Technology Career Technical Education Unit, under the direction of the Superintendent of Public Instruction, shall have responsibility for the administration of the program set forth in this article, as well as for the articulation of the program to the requirements and mandates of federally assisted career technical education.

(d) An appropriate number of employees shall serve as program consultants in the Home Economics Careers and Technology Career Technical Education Unit, and shall be available to provide assistance to school districts. To the extent possible, the program consultants shall be geographically located in areas that are most readily accessible to the school districts they assist. At least one consultant shall be responsible for the coordination of the leadership development activities of pupil home economics careers and technology organizations and associations.

(e) The State Department of Education shall accomplish the staffing of the Home Economics Careers and Technology Career Technical Education Unit in compliance with this article by reassigning priorities in staff assignments within the department so that the staffing results in no new costs to the state.

SEC. 93. Section 52488 of the Education Code is amended to read:

52488. (a) The Superintendent of Public Instruction shall establish on July 1, 1997, and convene the Home Economics Careers and Technology Advisory Committee. The committee shall develop recommendations for state programs in home economics careers and technology education for presentation to the Legislature for review and to the State Board of Education to be used in the development and adoption pursuant to Section 52486 of the rules and regulations necessary to implement the provisions of this article. Recommendations shall include, but not be limited to, the development of a curriculum and

a strategy for the purpose of establishing a source of trained and qualified instructors for home economics careers and technology programs throughout the public school system, and a public information outreach strategy regarding the importance of consumer home economics education and home economics-related occupations in California. Members of the advisory committee shall serve without compensation, including travel and per diem. The advisory committee shall cease to exist on January 1, 2000.

(b) The committee shall be representative of consumer home economics education and home economics-related occupation specialists and representatives of the various fields and industries in California described in Section 52485. Nominations for the committee shall be solicited from the various task forces that have assisted in the development of curriculum standards for home economics careers and technology career technical education programs.

(c) The committee shall be composed of the following:

(1) A voluntary representative from a university conducting a teacher education program in home economics careers and technology.

(2) A voluntary representative from a community college conducting a program in home economics careers and technology education.

(3) A voluntary representative from a high school conducting a consumer home economics program in home economics careers and technology.

(4) A voluntary representative from a high school conducting a home economics-related occupations program in home economics careers and technology.

(5) A voluntary representative from a middle level school conducting an exploratory program in home economics careers and technology.

(6) A former student of a home economics careers and technology education program.

(7) A parent of a pupil enrolled in home economics careers and technology education.

(8) Eight other individuals representing diverse industries related to established career paths in home economics careers and technology education from various geographic locations in the state.

The State Supervisor of the Home Economics Careers and Technology Vocational Education Unit shall serve as the committee consultant.

SEC. 94. Section 52489 of the Education Code is amended to read:

52489. (a) The curriculum of school districts that choose to participate in the state program of home economics careers and technology career technical education shall include all of the following components:

(1) Organized classes in the study of home economics careers and technology, both for consumer home economics and home economics-related occupations.

(2) A pupil-supervised worksite learning experience appropriate to the specific home economics career and technology program.

(3) A program of leadership, organization, personal development, and service learning.

(b) Pupil learning activities developed to supplement these components shall be considered curricular and shall contribute to the grade of the participating pupil when those activities are integral to assisting the pupil to achieve the personal or career objective of the class or course.

SEC. 95. Section 52490 of the Education Code is amended to read:

52490. (a) In order to ensure effective instruction in home economics careers and technology career technical education, instructors need access to updated curricula that prepares pupils with the knowledge, skills, and attitudes to function as effective family members, citizens, and community leaders as well as productive employees in industries critical to the economic growth of California, including, but not limited to, hospitality, tourism, and food service. In addition, an ongoing professional development program tied to the latest research, educational trends, industry-validated curriculum standards, and effective teaching strategies is crucial if instructors are to provide quality, relevant instruction.

(b) It is the intent of the Legislature that a statewide home economics careers and technology curriculum and professional development project be established to do the following:

(1) Create opportunities for researchers, higher education, faculty, and elementary and secondary school faculty to work together to accomplish all of the following:

(A) Identify exemplary teaching practices.

(B) Examine and develop research on learning, knowledge, and educational materials.

(C) Give consideration to the implementation of statewide curriculum standards in the content areas of both consumer home economics education and home economics-related occupations education, with particular attention to the learning needs and styles of an increasingly diverse pupil population, many of whom are underachieving.

(2) Be modeled after projects that have been successful in strengthening systematically the subject matter knowledge and instructional strategies of project participants, including, but not limited to, the California Writing Project and the California Mathematics Project.

(3) Include an evaluation plan designed to measure the degree of implementation of the statewide project and local sites, changes in the instructional practices of participating teachers, and improvements in the learning and involvement by pupils in career technical home economics careers and technology education.

(c) The project shall be established by contract at a university with a viable teacher education program that prepares instructors to teach in both consumer home economics education and home economics-related occupations education programs. The contract shall be awarded under the request for proposal provisions of Section 10344 of the Public Contract Code.

(d) The project shall operate under the direction of the Home Economics Careers and Technology Career Technical Education Unit within the State Department of Education to ensure effective collaboration and articulation of programs in kindergarten and grades 1 to 12, inclusive.

(e) The project shall be funded only from available federal funds.

SEC. 96. The heading of Article 9.5 (commencing with Section 52495) of Chapter 9 of Part 28 of the Education Code is amended to read:

Article 9.5. Home Economics Careers and Technology Career Technical Education Incentive Program

SEC. 97. Section 52495 of the Education Code is amended to read:

52495. An incentive grant program shall be established for the purpose of improving, expanding, and establishing instructional programs in home economics careers and technology career technical education to improve the academic achievement and career preparation of pupils in those fields.

SEC. 98. Section 52497 of the Education Code is amended to read:

52497. The governing board of a school district that operates a home economics careers and technology career technical education program may apply to the Superintendent of Public Instruction for an incentive grant pursuant to this article.

SEC. 99. Section 52498 of the Education Code is amended to read:

52498. The Superintendent of Public Instruction shall award two-year grants of an amount to be determined by the Superintendent of Public Instruction, on a competitive basis, to applicant school districts that meet the following requirements:

(a) The school district shall demonstrate that the home economics careers and technology career technical education program for which grant funds are sought meets specified criteria developed by the Superintendent of Public Instruction.

(b) The participating school district shall contribute an amount of funds equal to the amount of its grant for use in improving, expanding, and establishing instructional programs in home economics careers and technology career technical education.

(c) The school district shall certify to the Superintendent of Public Instruction that the grant funds received and the matching funds contributed by the school district will be used solely for the purposes described in this article.

(d) The school district shall, evaluate the program funded with a grant pursuant to this article according to outcome indicators determined by the Superintendent of Public Instruction.

SEC. 100. Section 52499 of the Education Code is amended to read:

52499. For the purposes of this article, home economics careers and technology career technical education programs means the purchase of instructional resources and equipment appropriate for the instructional program, professional development activities for home economics careers and technology career technical education teachers and members of interdisciplinary teams working to implement selected career paths in home economics careers and technology career technical education, and pupil development activities.

SEC. 101. Section 52499.3 of the Education Code is amended to read:

52499.3. Notwithstanding any other provision of law, any requirement of this article that requires school districts to contribute local matching funds to be eligible for state funds for nonsalary costs of home economics careers and technology career technical education incentive programs may be waived by the Superintendent of Public Instruction if he or she finds that a matching requirement would create a financial hardship for any school district.

SEC. 102. Section 52904 of the Education Code is amended to read:

52904. This article shall become inoperative on June 30, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 103. Section 52980 of the Education Code is repealed.

SEC. 104. Section 52981 of the Education Code is repealed.

SEC. 105. Section 52982 of the Education Code is repealed.

SEC. 106. Section 54750 of the Education Code is repealed.

SEC. 107. Section 54751 of the Education Code is repealed.

SEC. 108. Section 54751.1 of the Education Code is repealed.

SEC. 109. Section 54752 of the Education Code is repealed.

SEC. 110. Section 56138 of the Education Code is repealed.

SEC. 111. Section 56375 of the Education Code is amended and renumbered to read:

56390. Notwithstanding Section 51412 or any other provision of law, a local educational agency may award an individual with exceptional needs a certificate or document of educational achievement or completion if the requirements of subdivision (a), (b), or (c) are met.

(a) The individual has satisfactorily completed a prescribed alternative course of study approved by the governing board of the school district in which the individual attended school or the school district with jurisdiction over the individual and identified in his or her individualized education program.

(b) The individual has satisfactorily met his or her individualized education program goals and objectives during high school as determined by the individualized education program team.

(c) The individual has satisfactorily attended high school, participated in the instruction as prescribed in his or her individualized education program, and has met the objectives of the statement of transition services.

SEC. 112. Section 56376 of the Education Code is amended and renumbered to read:

56391. An individual with exceptional needs who meets the criteria for a certificate or document described in Section 56375 shall be eligible to participate in any graduation ceremony and any school activity related to graduation in which a pupil of similar age without disabilities would be eligible to participate. The right to participate in graduation ceremonies does not equate a certificate or document described in Section 56375 with a regular high school diploma.

SEC. 113. Section 56377 of the Education Code is amended and renumbered to read:

56392. It is not the intent of the Legislature by enacting this chapter to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the pupil has completed the prescribed course of study and has passed the proficiency requirements with or without differential standards pursuant to Section 51215.

SEC. 114. Section 56378 of the Education Code is amended and renumbered to read:

56393. On or before July 1, 2000, the Advisory Commission on Special Education shall, pursuant to Section 33595, study and report to the State Board of Education, the Superintendent of Public Instruction, the Legislature, and the Governor on the practice of awarding certificates or documents of educational achievement or completion and diplomas, as appropriate, to individuals with exceptional needs. The report shall contain recommendations for improving the system of recognition for educational achievement or completion of studies to individuals with exceptional needs.

SEC. 115. Section 56836.10 of the Education Code is amended to read:

56836.10. (a) The superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the 1998–99 fiscal year:

(1) Divide the amount of funding for the special education local plan area computed for the 1997–98 fiscal year pursuant to Section 56836.09 by the number of units of average daily attendance, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that subdivision read on July 1, 1997, reported for the special education local plan area for the 1997–98 fiscal year.

(2) Add the amount computed in paragraph (1) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the fiscal year in which the computation is made:

(1) For the 1999–2000 fiscal year, divide the amount of funding for the special education local plan area computed for the 1998–99 fiscal year pursuant to subdivision (a) of Section 56836.08 by the number of units of average daily attendance upon which funding is based pursuant to subdivision (a) of Section 56836.15 for the special education local plan area for the 1998–99 fiscal year.

(2) For the 2000–01 fiscal year, and each fiscal year thereafter, divide the amount of funding for the special education local plan area computed for the prior fiscal year pursuant to subdivision (b) of Section 56836.08 by the number of units of average daily attendance upon which funding is based pursuant to subdivision (a) of Section 56836.15 for the special education local plan area for the prior fiscal year.

SEC. 116. Section 56836.11 of the Education Code is amended to read:

56836.11. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the statewide target amount per unit of average daily attendance for special education local plan areas:

(1) Total the amount of funding computed for each special education local plan area exclusive of the amount of funding computed for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative

Education Special Education Local Plan Area, pursuant to Section 56836.09 for the 1997–98 fiscal year.

(2) Total the number of units of average daily attendance reported for each special education local plan area for the 1997–98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that section read on July 1, 1996, and exclusive of the units of average daily attendance computed for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

(3) Divide the sum computed in paragraph (1) by the sum computed in paragraph (2) to determine the statewide target amount for the 1997–98 fiscal year.

(4) Add the amount computed in paragraph (3) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998–99 fiscal year to determine the statewide target amount for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, to determine the statewide target amount per unit of average daily attendance for special education local plan areas, the superintendent shall multiply the statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

SEC. 117. Section 6516.6 of the Government Code is amended to read:

6516.6. (a) Notwithstanding any other provision of law, a joint powers agency established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase obligations of local agencies or make loans to local agencies, which moneys the local agencies are hereby authorized to borrow, to finance the local agencies' unfunded actuarial pension liability or to purchase, or to make loans to finance the purchase of, delinquent assessments or taxes levied on the secured roll by the local agencies, the county, or any other political subdivision of the state. Notwithstanding any other provision of law, including Section 53854, the local agency obligations or loans, if any, shall be repaid in the time, manner and amounts, with interest, security, and other terms as agreed to by the local agency and the joint powers authority.

(b) Notwithstanding any other provision of law, a joint powers authority established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing

with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase or acquire, by sale, assignment, pledge, or other transfer, any or all right, title, and interest of any local agency in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency and placed for collection on the secured, unsecured, or supplemental property tax rolls. Local agencies, including, cities, counties, cities and counties, school districts, redevelopment agencies, and all other special districts that are authorized by law to levy property taxes on the county tax rolls, are hereby authorized to sell, assign, pledge, or otherwise transfer to a joint powers authority any or all of their right, title, and interest in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency for collection on the secured, unsecured, or supplemental property tax rolls in accordance with the terms and conditions that may be set forth in an agreement with a joint powers authority.

(c) Notwithstanding Division 1 (commencing with Section 50) of the Revenue and Taxation Code, upon any transfer authorized in subdivision (b), the following shall apply:

(1) A local agency shall be entitled to timely payment of all delinquent taxes, assessments, and other receivables collected on its behalf on the secured, unsecured, and supplemental tax rolls, along with all penalties, interest, costs, and other charges thereon, no later than 30 calendar days after the close of the preceding monthly or four week accounting period during which the delinquencies were paid by or on account of any property owner.

(2) Upon its receipt of the delinquent taxes, assessments, and receivables that it had agreed to be transferred, a local agency shall pay those amounts, along with all applicable penalties, interest, costs, and other charges, to the joint powers authority in accordance with the terms and conditions that may be agreed to by the local agency and the joint powers authority.

(3) The joint powers authority shall be entitled to assert all right, title, and interest of the local agency in the enforcement and collection of the delinquent taxes, assessments, and receivables, including without limitation, its lien priority, its right to receive the proceeds of delinquent taxes, assessments, and receivables, and its right to receive all penalties, interest, administrative costs, and any other charges, including attorney fees and costs, if otherwise authorized by law to be collected by the local agency.

(4) (A) For any school district that participates in a joint powers authority using financing authorized by this section and that does not

participate in the alternative method of distribution of tax levies under Chapter 3 of Division 1 of Part 8 of the Revenue and Taxation Code, the amount of property tax receipts to be reported in a fiscal year for the district under subdivision (f) of Section 75.70 of the Revenue and Taxation Code, or any other similar law requiring reporting of school district property tax receipts, shall be equal to 100 percent of the school district's allocable share of the taxes levied for the fiscal year on its behalf. One hundred percent of the school district's allocable share of the delinquent taxes levied for the fiscal year, whether or not the delinquent taxes are ever collected, shall be paid by the joint powers authority to the county auditor and shall be distributed to the school district by the county auditor in the same time and manner otherwise specified for the distribution of tax revenues generally to school districts pursuant to current law. Any additional amounts shall not be so reported and may be provided directly to a school district by a joint powers authority.

(B) A joint powers authority financing delinquent school district taxes and related penalties pursuant to this subdivision shall be solely responsible for, and shall pay directly to the county, all reasonable and identifiable administrative costs and expenses of the county which are incurred as a direct result of the compliance of the county tax collector or county auditor, or both, with any new or additional administrative procedures required for the county to comply with this subdivision. Where reasonably possible, the county shall provide a joint powers authority with an estimate of the amount of and basis for any additional administrative costs and expenses within a reasonable time after written request for an estimate.

(C) In no event shall the state be responsible or liable for a joint powers authority's failure to actually pay the amounts required by subparagraphs (A) and (B), nor shall a failure constitute a basis for a claim against the state by a school district, county, or joint powers authority.

(D) The phrase ''school district,'' as used in this section, includes all school districts of every kind or class, including, without limitation, community college districts and county superintendents of school.

(d) The powers conferred by this section upon joint powers authorities and local agencies shall be complete, additional, and cumulative to all other powers conferred upon them by law. Except as otherwise required by this section, the agreements authorized by this section need not comply with the requirements of any other laws applicable to the same subject matter.

(e) An action to determine the validity of any bonds issued, any joint powers agreements entered into, any related agreements, including, without limitation, any bond indenture or any agreements relating to the sale, assignment, or pledge entered into by a joint powers authority or

a local agency, the priority of any lien transferred in accordance with this section, and the respective rights and obligations of any joint powers authority and any party with whom the joint powers authority may contract pursuant to this chapter, may be brought by the joint powers authority pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

(f) This section shall not be construed to affect the manner in which an agency participates in or withdraws from the alternative distribution method established by Chapter 3 (commencing with Section 4701) of Part 8 of Division 1 of the Revenue and Taxation Code.

SEC. 118. Section 19050.8 of the Government Code is amended to read:

19050.8. The board may prescribe rules governing the temporary assignment or loan of employees within an agency or between agencies for not to exceed two years or between jurisdictions for not to exceed four years for any of the following purposes:

(a) To provide training to employees.

(b) To enable an agency to obtain expertise needed to meet a compelling program or management need.

(c) To facilitate the return of injured employees to work.

These temporary assignments or loans shall be deemed to be in accord with this part limiting employees to duties consistent with their class and may be used to meet minimum requirements for promotional as well as open examinations. An employee participating in that arrangement shall have the absolute right to return to his or her former position. Any temporary assignment or loan of an employee made for the purpose specified in subdivision (b) shall be made only with the voluntary consent of the employee.

In addition, out-of-class experience obtained in a manner not described in this section may be used to meet minimum requirements for promotional as well as open examinations, only if it was obtained by the employee in good faith and was properly verified under standards prescribed by board rule.

For purposes of this section, a temporary assignment or loan between educational agencies shall be extended for up to two additional years upon a finding by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, and with the approval of the Executive Officer of the State Personnel Board, that the extension is necessary in order to substantially complete work on an educational improvement project. However, the temporary assignment of any local educator who is performing the duties of a nonrepresented classification while on loan to a state education agency may be extended for as many successive two year intervals as necessary by the

Superintendent of Public Instruction or the Chancellor of Community Colleges with the concurrence of the local education agency. Public and private colleges and universities shall be considered educational jurisdictions within the meaning of this section.

A temporary assignment within an agency or between agencies may be extended by the board for up to two additional years in order for an employee to complete an apprenticeship program.

SEC. 119. Section 53095 of the Government Code is amended to read:

53095. The provisions of this article shall prevail over Sections 17215 and 81035 of the Education Code and over Section 65402 of the Government Code.

SEC. 120. Section 66455.9 of the Government Code is amended to read:

66455.9. Whenever there is consideration of an area within a development for a public schoolsite, the advisory agency shall give the affected districts and the State Department of Education written notice of the proposed site. The written notice shall include the identification of any existing or proposed runways within the distance specified in Section 17215 of the Education Code. If the site is within the distance of an existing or proposed airport runway as described in Section 17215 of the Education Code, the department shall notify the State Department of Transportation as required by the section and the site shall be investigated by the State Department of Transportation required by Section 17215.

SEC. 121. Section 104420 of the Health and Safety Code is amended to read:

104420. The State Department of Education shall provide the leadership for the successful implementation of this article in programs administered by local public and private schools, school districts, and county offices of education. The State Department of Education shall do all of the following:

(a) Provide a planning and technical assistance program to carry out its responsibilities under this article.

(b) Provide guidelines for schools, school districts, and school district consortia to follow in the preparation of plans for implementation of antitobacco use programs for schoolage populations. The guidelines shall:

(1) Require the applicant agency to select one or more model program designs and shall permit the applicant to modify the model program designs to take special local needs and conditions into account.

(2) Require the applicant agency to prepare for each target population to be served a description of the service to be provided, an estimate of

the number to be served, an estimate of the success rate and a method to determine to what extent goals have been achieved.

(3) Require plan submissions to include a staffing configuration and a budget setting forth use and distribution of funds in a clear and detailed manner.

(c) Prepare model program designs and information for schools, school districts, consortia, and county offices of education to follow in establishing direct service programs to targeted populations. Model program designs shall, to the extent feasible, be based on studies and evaluations that determine which service delivery systems are effective in reducing tobacco use and are cost-effective. The State Department of Education shall consult with the department, and school districts with existing antitobacco programs in the preparation of model program designs and information.

(d) Provide technical assistance for schools, school districts, and county offices of education regarding the prevention and cessation of tobacco use. In fulfilling its technical assistance responsibilities, the State Department of Education may establish a center for tobacco use prevention that shall identify, maintain, and develop instructional materials and curricula encouraging the prevention or cessation of tobacco use. The State Department of Education shall consult with the department and others with expertise in antitobacco materials or curricula in the preparation of these materials and curricula.

(e) Monitor the implementation of programs that it has approved under this article to ensure successful implementation.

(f) Prepare guidelines within 180 days of the effective date of this article for a school-based program of outreach, education, intervention, counseling, peer counseling, and other activities to reduce and prevent smoking among schoolage youth.

(g) Assist county offices of education to employ a tobacco use prevention coordinator to assist local schools and local public and community agencies in preventing tobacco use by pupils.

(h) Train the tobacco use prevention coordinators of county offices of education so that they are:

(1) Familiar with relevant research regarding the effectiveness of various kinds of antitobacco use programs.

(2) Familiar with department guidelines and requirements for submission, review, and approval of school-based plans.

(3) Able to provide effective technical assistance to schools and school districts.

(i) Establish a tobacco use prevention innovation program effort directed at specific pupil populations.

(j) Establish a competitive grants program to develop innovative programs promoting the avoidance, abatement, and cessation of tobacco use among pupils.

(k) Establish a tobacco-free school recognition awards program.

(*l*) As a condition of receiving funds pursuant to this article, the State Department of Education, county offices of education, and school districts shall ensure that they coordinate their efforts toward smoking prevention and cessation with the lead local agency in the community where the local school district is located.

(m) (1) Develop, in coordination with the county offices of education, a formula that allocates funds for school-based, antitobacco education programs to school districts and county offices of education for all pupils in grades 4 to 8, inclusive, on the basis of the average daily attendance (ADA) of pupils. School districts shall provide tobacco-use prevention instruction for pupils, grades 4 to 8, inclusive, that address the following essential topics:

(A) Immediate and long-term undesirable physiologic, cosmetic, and social consequences of tobacco use.

(B) Reasons that adolescents say they smoke or use tobacco.

(C) Peer norms and social influences that promote tobacco use.

(D) Refusal skills for resisting social influences that promote tobacco use.

(2) Develop a competitive grants program administered by the State Department of Education directed at pupils in grades 9 to 12, inclusive. The purpose of the grant program shall be to conduct tobacco-use prevention and cessation activities targeted to high-risk pupils and groups in order to reduce the number of persons beginning to use tobacco, or continuing to use tobacco. The State Department of Education shall consult with local lead agencies, the Tobacco Education and Research Oversight Committee, and representatives from nonprofit groups dedicated to the reduction of tobacco-associated disease in making grant award determinations. Grant award amounts shall be determined by available funds. The State Department of Education shall give priority to programs, including, but not limited to, the following:

(A) Target current smokers and pupils most at risk for beginning to use tobacco.

(B) Offer or refer pupils to cessation classes for current smokers.

(C) Utilize existing antismoking resources, including local antismoking efforts by local lead agencies and competitive grant recipients.

(n) Allocate funds for administration to county offices of education for implementation of Tobacco Use Prevention Programs. The funds shall be allocated to all participating county offices of education at a minimum amount of up to twenty-five thousand dollars ($25,000). If

funds appropriated for purposes of allocating at least twenty-five thousand dollars ($25,000) to all participating county offices of education are insufficient, the Superintendent of Public Instruction shall prorate available funds among participating county offices of education ensuring that all participating county offices of education receive an equal minimum level of funding of up to twenty-five thousand dollars ($25,000). If funds are sufficient to provide all participating county offices of education a minimum of up to twenty-five thousand dollars ($25,000), the remaining funds shall be allocated according to the following schedule based on average daily attendance in the prior year credited to all elementary, high, and unified school districts, and to the county superintendent of schools within the county as certified by the Superintendent of Public Instruction:

(1) For counties with over 550,000 units of average daily attendance, thirty cents ($0.30) per average daily attendance.

(2) For counties with more than 100,000 and less than 550,000 units of average daily attendance, sixty-five cents ($0.65) per average daily attendance.

(3) For counties with more than 50,000 and less than 100,000 units of average daily attendance, ninety cents ($0.90) per average daily attendance.

(4) For counties with more than 25,000 and less than 50,000 units of average daily attendance, one dollar ($1) per average daily attendance.

(5) For counties with less than 25,000 units of average daily attendance, twenty-five thousand dollars ($25,000).

(o) Allocate funds appropriated by the act adding this subdivision for local assistance to school districts and county offices of education based on average daily attendance reported in the second principal apportionment in the prior fiscal year. Those school districts and county offices of education that receive one hundred thousand dollars ($100,000) or more of local assistance pursuant to this part shall target 30 percent of those funds for allocation to schools that enroll a disproportionate share of pupils at risk for tobacco use.

(p) (1) Provide that all school districts and county offices of education that receive funding under subdivision (o) make reasonable progress toward providing a tobacco-free environment in school facilities for pupils and employees.

(2) All school districts and county offices of education that receive funding pursuant to paragraph (1) shall adopt and enforce a tobacco-free campus policy no later than July of each fiscal year. The policy shall prohibit the use of tobacco products, any time, in district-owned or leased buildings, on district property and in district vehicles. Information about the policy and enforcement procedures shall be communicated clearly to school personnel, parents, pupils, and the

larger community. Signs stating ''Tobacco use is prohibited'' shall be prominently displayed at all entrances to school property. Information about smoking cessation support programs shall be made available and encouraged for pupils and staff. Any school district or county office of education that does not have a tobacco-free district policy implemented by July 1, shall not be eligible to apply for funds from the Cigarette and Tobacco Products Surtax Fund for that fiscal year. Funds that are withheld from school districts that fail to comply with the tobacco-free policy shall be available for allocation to school districts implementing a tobacco-use prevention education program, pursuant to subdivision (m).

SEC. 122. Item 6110-104-0001 of Section 2.00 of the Budget Act of 2000 is amended to read:

6110–104–0001—For local assistance, Department of Education (Proposition 98), Program 10.10.011–School Apportionments—Remedial Summer School Programs, for transfer to Section A of the State School Fund, for summer school and remedial programs pursuant to legislation to be enacted in the 1999–00 Regular Session that becomes operative on or before January 1, 2001	418,743,000
Schedule:	
(a) 10.10.011.003–School Apportionments, for Remedial Summer School Programs, for the purposes of Section 42239 of the Education Code	144,454,000
(b) 10.10.011.004–School Apportionments, for Core Academic Summer School Programs, for the purposes of Section 42239 of the Education Code . .	148,102,000
(c) 10.10.0.11.007–School Apportionments, for Remedial Instruction Programs for pupils enrolled in grades 2–6, inclusive, pursuant to Sections 37252.5 and 37252.6 of the Education Code.	86,187,000
(d) Unallocated Funds	40,000,000
Provisions:	

1. Notwithstanding any other provision of law, the 2000–01 fiscal year the Superintendent of Public Instruction shall allocate a minimum of $6,980 for supplemental summer school programs in each school district for which the prior fiscal year enrollment was less than 500 and that, in the 2000–01 fiscal year, offers at least 1,500 hours of supplemental school instruction. A small school district, as described above, that offers less than 1,500 hours of supplemental summer school offerings shall receive a proportionate reduction in its allocation. For the purpose of this provision, supplemental summer school programs shall be defined as programs authorized under paragraph (2) of subdivision (f) of Section 42239 of the Education Code as it read on July 1, 1999.
2. Of the funds appropriated in this item, $10,467,697 is for the purpose of providing a cost–of–living adjustment (COLA) to summer school and remedial programs, in lieu of the amount that would otherwise be provided pursuant to statute.
3. Notwithstanding any other provision of law, the Director of Finance may, to prevent deficiencies in any of the programs funded by the appropriation in this item, use the authority granted by Section 26.00 of this act to transfer funding between schedules of this item.
4. Notwithstanding any other provision of law, the rate of reimbursement shall be $3 per hour of supplemental instruction unless specified otherwise through legislation enacted in the 1999–2000 Regular Session. The funds in Schedule (d) shall be contingent on the passage of that legislation.
5. Notwithstanding any other provision of law, the Department of Finance may transfer amounts between Items 6110–104–0001, 6110–204–001, and 6110–205–0001 of this
act in order to minimize deficiencies for any of the programs budgeted in those items.

SEC. 123. Item 6110-105-0001 of Section 2.00 of the Budget Act of 2000 is amended to read:

6110–105–0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund for the purposes of Article 1 (commencing with Section 52300) of Chapter 9 of Part 28 of the Education Code 337,373,000

Schedule;

(a) 10.10.004–Instruction Program—School Apportionments, Regional Occupational Centers and Programs 344,690,000

(b) Reimbursements . . . . . –7,317,000

Provisions:

1. Notwithstanding any other provision of law, the funds appropriated in this item are for transfer by the Controller to Section A of the State School Fund, in lieu of the amount that otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 1999–00 fiscal year pursuant to Sections 14002 and 14004 of the Education Code, in an amount as needed for apportionment pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28 of the Education Code.
2. Funds appropriated in this item shall be apportioned by the Superintendent of Public Instruction pursuant to Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28 of the Education Code.

3. Because Chapter 482 of the Statutes of 1984 was chaptered after Chapter 268 of the Statutes of 1984, the Legislature's intent regarding the eligibility of regional occupational centers and programs for incentive funding for a longer instructional year under Section 46200 of the Education Code was not carried out. It is the intent of the Legislature that regional occupational centers and programs not be eligible for that incentive funding.

   Notwithstanding any other provision of law, the funds appropriated in this item may not be expended for the purposes of providing or continuing incentive funding for a longer instructional year pursuant to Section 46200 of the Education Code.

4. Notwithstanding any other provision of law, funds appropriated in this item for average daily attendance (ADA) generated by participants in welfare–to–work activities under the CalWORKs program established in Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code may be apportioned on an advance basis to local education agencies based on anticipated units of ADA if a prior application for this additional ADA funding has been approved by the Superintendent of Public Instruction.

5. Of the amount appropriated in this item, $1,161,000 is to fund remedial education services for participants in welfare–to–work activities under the CalWORKs program.

5.5 Of the funds appropriated in this item, $16,000,000 is to provide equalization of centers and programs and $16,000,000 is for a rate increase. Both are subject to the establishment of these activities by legislation, enacted during the 2000–01 Regular Session, which becomes effective on or before January 1, 2001.

6. Of the funds appropriated in this item, $6,624,000 is provided for increases in average daily attendance at a rate of 2.07 percent and $10,366,000 is for the purpose of providing a cost–of–living adjustment at a rate of 3.17 percent.

7. Indirect costs charged to Regional Occupational Centers and Programs may not exceed the school district or county office of education, as appropriate, prior year indirect cost rate as approved by the State Department of Education.

The indirect costs charged by the county office of education and school districts that provide Regional Occupational Centers and Programs services on behalf of the county office of education or a joint powers authority, when added together, may not exceed the indirect cost rate approved by the State Department of Education for the county office of education or the school district, whichever is higher.

Revenue limit funds apportioned to a county office of education or school district for Regional Occupational Centers and Programs must be expended on programs and services offered by the Regional Occupational Centers and Programs.

SEC. 124. Item 6110-134-0001 of Section 2.00 of the Budget Act of 2000 is amended to read:

6110–134–0001–For local assistance, Department of Education (Proposition 98), Program 10–Instruction, for allocation to local education agencies 118,650,000

Provisions:

1. The funds appropriated in this item shall be allocated for purposes of teacher recruitment and retention as specified in Chapter 70 of the Statutes of 2000.

SEC. 125. Item 6110-151-0001 of Section 2.00 of the Budget Act of 2000 is amended to read:

6110–151–0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.050–California Indian Education Centers established pursuant to Article 6 (commencing with Section 33380) of Chapter 3 of Part 20 of the Education Code 3,469,000

Provisions:

1. Of the funds appropriated in this item, $45,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.45 percent and $101,000 is for the purpose of providing a cost–of–living adjustment (COLA) a rate of 3.17 percent.

SEC. 126. Item 6110-165-0001 of Section 2.00 of the Budget Act of 2000 is amended to read:

6110–165–0001—For local assistance, Department of Education 7,022,000

Schedule:

(a) 10.70–Vocational Education 20,868,000

(b) Reimbursements . . . . . –13,846,000

Provisions:

1. $13,846,000 of the funds appropriated in this item are for the purpose of implementing the federal Workforce Investment Act.

2. The Superintendent of Public Instruction shall allocate the funds appropriated in this item to adult schools, Regional Occupational Centers and Programs, to school districts operating high schools, and to county offices of education that operate alternative programs for high school youth to support capacity–building activities related to youth services including, but not limited to, supporting educational opportunities and development of career–technical skills, youth councils, One–Stop Career Centers, for building regional collaboratives, for assessing student outcomes, student performance, retention and accountability. The Superintendent of Public Instruction shall give priority in allocating these funds to support CalWORKS participants who are eligible for youth services in the federal Workforce Investment Act.

SEC. 127. Item 6110-495 of Section 2.00 of the Budget Act of 2000 is amended to read:

6110–495—Reversion, Department of Education, Proposition 98. The following amounts shall revert to the Proposition 98 Reversion Account:

1. $965,330 from Chapter 975 of the Statutes of 1995, as reappropriated by subdivision (a) of Section 57 of Chapter 330 of the Statutes of 1998.
2. $70,000,000 from Item 6110–112–0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998) as reappropriated pursuant to Ch. 313, Stats. 1998.
3. $15,221,252 from Item 6110–295–0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998).
4. $27,000,000, or whatever lesser or greater amount reflects the remaining unencumbered balance after the reappropriation specified in Item 6110–494(1) of Item 6110–196–0001 of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999), for after school programs.

5. $75,000,000, or whatever lesser or greater amount reflects the unencumbered balance of the appropriation specified in Item 6110–112–0001 of the Budget Act of 1999 (Ch. 50, Stats. 1999).
6. $5,000,000 or whatever greater or lesser amounts reflects the unencumbered balance of the appropriation specified in Item 6110–211–0001 of the Budget Act of 1999 (Ch. 50, Stats. 1999).
7. $20,000,000 from the appropriation specified in Provision 1 of Item 6110–133–0001 of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999).
8. $20,600,000 or whatever greater or lesser amount reflects the unencumbered balance of the appropriation specified in Schedule (a) of Item 6110–156–0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998).
9. $40,608,000 from Provision (i) of Item 6110–485 of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999).
10. $380,000 from Provision (d) of Item 6110–485 of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999).

SEC. 128. Section 35 of Chapter 71 of the Statutes of 2000 is amended to read:

Sec. 35. (a) (1) The sum of twenty-five million dollars ($25,000,000) is hereby appropriated from the General Fund for transfer by the Controller to the Child Care Facilities Revolving Fund established pursuant to Section 8278.3 of the Education Code.

(2) The sum of one hundred seventy-five million dollars ($175,000,000) is hereby appropriated from the General Fund to the Secretary for Education for allocation to school districts for high schools and to charter schools serving any of grades 9 to 12, inclusive, pursuant to the Education Technology Grant Program established pursuant to legislation enacted during the 1999–2000 Regular Session. The allocation shall be based on enrollment in grades 9 to 12, inclusive. Any unencumbered balance on March 15, 2001, of these funds shall be transferred by the Controller to the Superintendent of Public Instruction for allocation pursuant to the school district block grant authorized pursuant to Section 39 of this act. The funds shall be available for allocation pursuant to subdivision (c) of Section 39 of this act.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999–2000 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 1999–2000 fiscal year.

SEC. 129. Section 42 of Chapter 71 of the Statutes of 2000 is amended to read:

Sec. 42. (a) The sum of thirty-three million three hundred fifty-two thousand dollars ($33,352,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction in accordance with the following schedule:

(1) One hundred thousand dollars ($100,000) for allocation on a one-time basis to the Hispanic Media Education Group for an evaluation of the Cada Cabeza Es Un Mundo Latino-Chicano High School Dropout Prevention Program.

(2) One hundred ten thousand dollars ($110,000) for allocation on a one-time basis to the Orange County Department of Education for kitchen facilities at the Katharine Irvine Day School.

(3) Eighty thousand dollars ($80,000) for allocation on a one-time basis to the Santa Ana Unified School District for playground equipment for the Romero Cruz Elementary School.

(4) One hundred fifty-five thousand dollars ($155,000) for allocation on a one-time basis to the Centralia Elementary School District for playground equipment for the San Marino and Danbrook elementary schools.

(5) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Long Beach Unified School District for renovation of the swimming pool at Jordan High School.

(6) Three hundred thousand dollars ($300,000) for allocation on a one-time basis to the San Francisco Unified School District to expand instruction in arts education in kindergarten and grades 1 to 5, inclusive.

(7) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Culver City Unified School District to repair the track at Culver City High School.

(8) Ten thousand dollars ($10,000) for allocation on a one-time basis to Los Angeles Unified School District for a school-based/school-linked health program at Maclay Middle School.

(9) Ten thousand dollars ($10,000) for allocation on a one-time basis to Los Angeles Unified School District for a school-based/school-linked health program at Pacoima Middle School.

(10) Fifteen thousand dollars ($15,000) for allocation on a one-time basis to Raisin City Elementary School District for the Raisin City library.

(11) Twenty thousand dollars ($20,000) for allocation on a one-time basis to the Manhattan Beach Unified School District for purchase of equipment for teaching aids to reduce diversity intensity and increase cultural awareness at Mira Costa High School.

(12) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the El Nido Elementary School District for air-conditioning at El Nido Elementary.

(13) Sixty-two thousand dollars ($62,000) on a one-time basis to the Hilmar Unified School District for street access at Hilmar High School.

(14) Seventy-five thousand dollars ($75,000) for allocation on a one-time basis to the Wasco Union High School District for air-conditioning for the Wasco High School auditorium.

(15) One hundred thousand dollars ($100,000) for allocation on a one-time basis to the Los Angeles Unified School District for a parent education center at the Ligget Elementary School.

(16) One hundred thirty thousand dollars ($130,000) for allocation on a one-time basis to the San Diego City Unified School District for an ADA Tot Lot upgrade at the Alcott Elementary School.

(17) One hundred thirty-nine thousand dollars ($139,000) for allocation on a one-time basis to the Las Deltas Unified School District for a water well.

(18) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Sunnyvale Elementary School District for Project H.E.L.P.

(19) Two hundred fifty thousand dollars ($250,000) for allocation on a one-time basis to the Lamont Elementary School District for portable classrooms.

(20) Two hundred fifty thousand dollars ($250,000) for allocation on a one-time basis to the Compton Unified School District for a pool at Compton High School.

(21) Three hundred fifty thousand dollars ($350,000) for allocation on a one-time basis to the Fremont Union High School District for a swimming pool at Fremont High School.

(22) Four hundred fifty thousand dollars ($450,000) for allocation on a one-time basis to the Los Angeles Unified School District for the San Fernando High School Health Clinic.

(23) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Baldwin Park Unified School District for the DREAM project.

(24) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to Montebello Unified School District for natural gas powered delivery trucks and a natural gas fueling station.

(25) One hundred fifty thousand dollars ($150,000) for allocation to the Elk Grove Unified School District for a statewide Japanese language academy.

(26) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Oakland Unified School District for a reading training program.

(27) Three hundred fifty thousand dollars ($350,000) for allocation on a one-time basis to the Burbank Unified School District to continue an innovative literacy program.

(28) Three hundred thousand dollars ($300,000) for allocation on a one-time basis to the Temple City Unified School District Arts Academy.

(29) Four hundred thousand dollars ($400,000) for allocation on a one-time basis to the Alum Rock Union Elementary School District for a mathematics/science center.

(30) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the Santa Monica Malibu Unified School District for an after school youth program at Malibu High School.

(31) One hundred fifty thousand dollars ($150,000) for allocation on a one-time basis to the Pasadena Unified School District for the Pasadena Multipurpose Athletic Field.

(32) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Tahoe-Truckee Unified School District for the North Tahoe Youth Center.

(33) Three hundred sixty thousand dollars ($360,000) for allocation on a one-time basis to the Santa Barbara High School District for soccer and baseball fields.

(34) Six hundred seventy-five thousand dollars ($675,000) for allocation on a one-time basis to the Los Alamitos Unified School District for reimbursement for class size reduction costs.

(35) Ten million dollars ($10,000,000) for allocation on a one-time basis to the Alvord Unified School District for construction costs associated with the Center for Primary Education.

(36) Nine hundred thousand dollars ($900,000) for allocation on a one-time basis to the Riverside County Office of Education for purposes of screening and diagnosing pupils for Scotopic Sensitivity Syndrome.

(37) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Saugus Union Elementary School District for costs associated with testing air quality in portable classrooms.

(38) Two hundred seventy-five thousand dollars ($275,000) for allocation on a one-time basis to the Inyo County Office of Education for facilities costs.

(39) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Calaveras Unified School District for swimming pool renovations.

(40) Twenty-seven thousand dollars ($27,000) for allocation on a one-time basis to the Alta-Dutch Flat Union Elementary School District to provide pupil transportation services.

(41) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Gonzales Unified School District for slough repair costs.

(42) Two hundred seventy thousand dollars ($270,000) for allocation on a one-time basis to the Madera Unified School District for the Madera Safe Schools and Recreation Route.

(43) Four hundred sixty-nine thousand dollars ($469,000) for allocation on a one-time basis to the Mariposa Unified School District to offset declining average daily attendance funding.

(44) Five hundred sixty-eight ($568,000) for allocation on a one-time basis to the Chatom Union Elementary School District to offset declining average daily attendance funding and to purchase school buses.

(45) Three million seven hundred thousand dollars ($3,700,000) for allocation on a one-time basis to the Clovis Unified School District for the Central Valley Applied Agriculture and Technology Center.

(46) Six hundred thousand dollars ($600,000) for allocation on a one-time basis to the Orinda Union Elementary School District to improve pedestrian and vehicle safety.

(47) One hundred twelve thousand dollars ($112,000) for allocation on a one-time basis to the Alameda County Office of Education for the Smart Kids, Safe Kids Program.

(48) Four hundred seventy-five thousand dollars ($475,000) for allocation on a one-time basis to the Millbrae Elementary School District for declining enrollment.

(49) Four hundred thousand dollars ($400,000) for allocation on a one-time basis to the Los Angeles Unified School District to renovate Olive Vista Middle School.

(50) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the Escalon Unified School District for a new swimming pool.

(51) One hundred five thousand dollars ($105,000) for allocation on a one-time basis to the Borrego Springs Unified School District for a football field facility at the Borrego Springs High School.

(52) One hundred sixty thousand dollars ($160,000) for allocation on a one-time basis to the Soledad Enrichment Action Charter School for Operation Y.E.S.

(53) Four hundred fifty thousand dollars ($450,000) for allocation on a one-time basis to the Del Norte County Unified School District for construction of the Mountain School multipurpose building.

(54) One hundred thousand dollars ($100,000) for allocation on a gone-time basis to the L.A.'s Best for afterschool programs.

(55) Five million dollars ($5,000,000) for allocation on a one-time basis to the Clovis and Fresno Unified School Districts for the Center for Advanced Research and Technology.

(56) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Los Angeles Unified School District for the renovation of the San Fernando Middle School auditorium.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a), except the amount specified in paragraph (1), shall be deemed to be ''General Fund revenues appropriated to school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code for the 1999–2000 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 1999–2000 fiscal year.

SEC. 130. (a) Notwithstanding any other provision of law, average daily attendance for the Compton Unified School District for the first principal, second principal, and annual apportionments for the 1999–2000 fiscal year shall be deemed to be the product of 1.0075 multiplied by the average daily attendance reported for the first principal, second principal, and the annual apportionments for the 1998–99 fiscal year, respectively, as adjusted to reflect any corrections arising from subsequent audits.

(b) Notwithstanding any other provision of law, all California Basic Educational Data System (CBEDS) enrollment numbers for the Compton Unified School District for 1999 shall be deemed to be the product of 1.0075 multiplied by the October 1998 CBEDS enrollment numbers for Compton Unified School District.

SEC. 131. Section 26.5 of this bill incorporates amendments to Section 42238 of the Education Code proposed by both this bill and AB 148. It shall only become operative if (1) both bills are enacted and become effective on January 1, 2001, (2) each bill amends Section 42238

of the Education Code, and (3) this bill is enacted after AB 148, in which case Section 26 of this bill shall not become operative.

CHAPTER 1059

An act to amend Sections 11344.1, 11346.2, 11346.3, 11346.4, 11346.5, and 11346.8 of, to amend and repeal Section 11342 of, to add Sections 11340.8, 11341, 11345, 11346.45, 11346.7, 11347, 11347.6, and 11348 to, to add Sections 11342.535 and 11342.595 to, to add Article 7 (commencing with Section 65054) to Chapter 1.5 of Division 1 of Title 7 of, to add Chapter 3.7 (commencing with Section 15379.50) to Part 6.7 of Division 3 of Title 2 of, to repeal Section 11346.54 of, and to repeal Chapter 11 (commencing with Section 8850) of Division 1 of Title 2 of, the Government Code, relating to administrative procedures.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. (a) The Legislature hereby finds and declares all the following:

(1) The existing rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code) and other provisions of law impact small businesses and small businesses represent 98 percent of all businesses.

(2) Small businesses do not have the time, staff, and resources to monitor the state regulatory system and its impact on their businesses.

(b) The Legislature further finds that for many regulated individuals and businesses, the existing Administrative Procedure Act may be one or more of the following:

(1) Confusing duplicative, vague, and burdensome.

(2) Lacking clarity, specificity, and organization that results in unnecessary work and expense for both state agencies and the businesses and individuals being impacted by proposed regulations.

(3) Failing to maximize existing technology to make access to information easier, quicker, and cheaper for the public.

(4) Insufficiently protecting and representing the interests of small businesses.

SEC. 2. This act shall be known and may be referred to as the Small Business Regulatory Reform Act of 2000.

SEC. 3. Chapter 11 (commencing with Section 8850) of Division 1 of Title 2 of the Government Code is repealed.

SEC. 4. Section 11340.8 is added to the Government Code, to read:

11340.8. In order to make the regulatory process more user friendly and to improve communication between affected businesses and the regulatory agencies, each state agency that proposes regulations pursuant to this chapter shall do all of the following:

(a) Accept comments from interested parties by facsimile and electronic mail.

(b) Post on its Internet website, if the agency has an Internet website, information regarding the proposed regulation or proposed regulatory repeal or amendment that includes, but is not limited to, all of the following:

(1) Notice of the proposed action.

(2) Initial statement of reasons for the regulation or proposed repeal or amendment.

(3) Text of the proposed regulation or proposed amendment to the regulation or instructions on how to obtain the text.

(4) Final statement of reasons.

(5) If applicable, a dated notice of the intent of the agency to discontinue the proposed action.

(6) The office's decisions on the regulation, proposed regulation, or proposed amendment or repeal of a regulation.

(7) The date the regulation was filed with the Secretary of State.

(8) The effective date of the regulation.

(9) A statement to the effect that a business or person submitting a comment to a proposed regulation or proposed amendment or repeal of a regulation has the right to request a copy of the final statement of reasons.

(c) Publication under subdivision (b) supplements any other required form of publication or distribution. The failure to comply with this section is not grounds for disapproval of a proposed regulation. Subdivision (b) does not require an agency to establish or maintain a website or other forum for the electronic publication or distribution of written material.

SEC. 5. Section 11341 is added to the Government Code, to read:

11341. (a) The office shall establish a system to give a unique identification number to each regulatory action.

(b) The office and the state agency taking the regulatory action shall use the identification number given by the office pursuant to subdivision (a) to refer to the regulatory action for which a notice has already been published in the California Regulatory Notice Register.

(c) The identification number shall be sufficient information for a member of the public to identify and track a regulatory action both with

the office and the state agency taking the regulatory action. No other information pertaining to the regulatory action shall be required of a member of the public if the identification number of the regulatory action has been provided.

SEC. 6. Section 11342 of the Government Code is amended to read:

11342. In this chapter, unless otherwise specifically indicated, the following definitions apply:

(a) ''Agency'' and ''state agency'' do not include an agency in the judicial or legislative departments of the state government.

(b) ''Cost impact'' means the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

(c) ''Office'' means the Office of Administrative Law.

(d) ''Order of repeal'' means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

(e) ''Performance standard'' means a regulation that describes an objective with the criteria stated for achieving the objective.

(f) ''Plain English'' means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English.

(g) ''Prescriptive standard'' means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

(h) ''Proposed action'' means the regulatory action submitted to the office for publication in the California Regulatory Notice Register.

(i) ''Regulation'' means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. ''Regulation'' does not mean or include legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization, or any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(j) (1) ''Small business'' means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in paragraph (2), that is both of the following:

(A) Independently owned and operated.

(B) Not dominant in its field of operation.

(2) ''Small business'' does not include the following professional and business activities:

(A) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

(B) An insurance company, either stock or mutual.

(C) A mineral, oil, or gas broker; a subdivider or developer.

(D) A landscape architect, an architect, or a building designer.

(E) An entity organized as a nonprofit institution.

(F) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

(G) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatthours annually.

(H) A petroleum producer, a natural gas producer, a refiner, or a pipeline.

(I) A business activity exceeding the following annual gross receipts in the categories of:

(i) Agriculture, one million dollars ($1,000,000).

(ii) General construction, nine million five hundred thousand dollars ($9,500,000).

(iii) Special trade construction, five million dollars ($5,000,000).

(iv) Retail trade, two million dollars ($2,000,000).

(v) Wholesale trade, nine million five hundred thousand dollars ($9,500,000).

(vi) Services, two million dollars ($2,000,000).

(vii) Transportation and warehousing, one million five hundred thousand dollars ($1,500,000).

(J) A manufacturing enterprise exceeding 250 employees.

(K) A health care facility exceeding 150 beds or one million five hundred thousand dollars ($1,500,000) in annual gross receipts.

SEC. 6.2. Section 11342 of the Government Code is repealed.

SEC. 6.5. Section 11342.535 is added to the Government Code, to read:

11342.535. ''Cost impact'' means the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

SEC. 6.7. Section 11342.595 is added to the Government Code, to read:

11342.595. ''Proposed action'' means the regulatory action submitted to the office for publication in the California Regulatory Notice Register.

SEC. 7. Section 11344.1 of the Government Code is amended to read:

11344.1. The office shall do all of the following:

(a) Provide for the publication of the California Regulatory Notice Register, which shall be an official publication of the State of California and which shall contain the following:

(1) Notices of proposed action prepared by regulatory agencies, subject to the notice requirements of this chapter, and which have been approved by the office.

(2) A summary of all regulations filed with the Secretary of State in the previous week.

(3) Summaries of all regulation decisions issued in the previous week detailing the reasons for disapproval of a regulation, the reasons for not filing an emergency regulation, and the reasons for repealing an emergency regulation. The California Regulatory Notice Register shall also include a quarterly index of regulation decisions.

(4) Material that is required to be published under Sections 11349.5, 11349.7, and 11349.9.

(5) Determinations issued pursuant to Section 11340.5.

(b) Establish the publication dates and manner and form in which the California Regulatory Notice Register shall be prepared and published and ensure that it is published and distributed in a timely manner to the presiding officer and rules committee of each house of the Legislature and to all subscribers.

(c) Post on its website, on a weekly basis:

(1) The California Regulatory Notice Register. Each issue of the California Regulatory Notice Register on the office's website shall remain posted for a minimum of 18 months.

(2) One or more Internet links to assist the public to gain access to the text of regulations proposed by state agencies.

SEC. 8. Section 11345 is added to the Government Code, to read:

11345. The office is not required to develop a unique identification number system for each regulatory action pursuant to Section 11341 or to make the California Regulatory Notice Register available on its website pursuant to subdivision (c) of Section 11344.1 until January 1, 2002.

SEC. 9. Section 11346.2 of the Government Code is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in

Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(4) Facts, evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 9.5. Section 11346.2 of the Government Code is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a

previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 10. Section 11346.3 of the Government Code is amended to read:

11346.3. (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation.

(b) (1) All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

SEC. 11. Section 11346.4 of the Government Code is amended to read:

11346.4. (a) At least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be:

(1) Mailed to every person who has filed a request for notice of regulatory actions with the state agency. Each state agency shall give a person filing a request for notice of regulatory actions the option of being notified of all proposed regulatory actions or being notified of regulatory actions concerning one or more particular programs of the state agency.

(2) In cases in which the state agency is within a state department, mailed or delivered to the director of the department.

(3) Mailed to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action. "Representative" for the purposes of this paragraph includes, but is not limited to, a trade association, industry association, professional association, or any other business group or association of any kind that represents a business enterprise or employees of a business enterprise.

(4) When appropriate in the judgment of the state agency, mailed to any person or group of persons whom the agency believes to be interested in the proposed action and published in the form and manner as the state agency shall prescribe.

(5) Published in the California Regulatory Notice Register as prepared by the office for each state agency's notice of regulatory action.

(6) Posted on the state agency's website if the agency has a website.

(b) The effective period of a notice issued pursuant to this section shall not exceed one year from the date thereof. If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office within the period of one year, a notice of the proposed action shall again be issued pursuant to this article.

(c) Once the adoption, amendment, or repeal is completed and approved by the office, no further adoption, amendment, or repeal to the noticed regulation shall be made without subsequent notice being given.

(d) The office may refuse to publish a notice submitted to it if the agency has failed to comply with this article.

(e) The office shall make the California Regulatory Notice Register available to the public and state agencies at a nominal cost that is consistent with a policy of encouraging the widest possible notice distribution to interested persons.

(f) Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required by this section, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by that statute. The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a state agency pursuant to this article.

SEC. 12. Section 11346.45 is added to the Government Code, to read:

11346.45. (a) In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

(b) This section does not apply to a state agency in any instance where that state agency is required to implement federal law and regulations for which there is little or no discretion on the part of the state to vary.

(c) If the agency does not or cannot comply with the provisions of subdivision (a), it shall state the reasons for noncompliance with reasonable specificity in the rulemaking record.

(d) The provisions of this section shall not be subject to judicial review or to the provisions of Section 11349.1.

SEC. 13. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest containing a concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and the effect of the proposed action. The informative digest shall

be drafted in a format similar to the Legislative Counsel's digest on legislative bills.

(A) If the proposed action differs substantially from an existing comparable federal regulation or statute, the informative digest shall also include a brief description of the significant differences and the full citation of the federal regulations or statutes.

(B) If the proposed action affects small business, the informative digest shall also include a plain English policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, ''cost or savings'' means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt or amend any administrative regulation, determines that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: ''The (name of agency) finds that the (adoption/amendment) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.''

(8) If a state agency, in adopting or amending any administrative regulation, determines that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this determination, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support that finding.

An agency's determination and declaration that a proposed regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

''The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.''

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, determines that the action would have an effect. In addition, the agency officer designated in paragraph (13), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(12) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(13) The name and telephone number of the following:

(A) The agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(B) An agency person or persons designated to respond to questions on the substance of the proposed regulations, where appropriate.

(14) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(15) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(16) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(17) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(b) The agency representative designated in paragraph (13) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 13.5. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, ''cost or savings'' means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt , amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: ''The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.''

(8) If a state agency, in adopting , amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.

An agency's initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

''The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.''

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or

would be as effective and less burdensome to affected private persons than the proposed action.

(14) The name and telephone number of the following:

(A) The agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(B) An agency person or persons designated to respond to questions on the substance of the proposed regulations, where appropriate.

(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet website or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 14. Section 11346.54 of the Government Code is repealed.

SEC. 15. Section 11346.7 is added to the Government Code, to read:

11346.7. The office shall maintain a link on its website to the website maintained by the Small Business Advocate that also includes the telephone number of the Small Business Advocate.

SEC. 16. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, statements, arguments, or contentions, either oral or in writing, or both, shall be permitted. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless adequate provision is made for public comment on that matter.

(e) If a comment made at a public hearing raises a new issue concerning a proposed regulation and a member of the public requests additional time to respond to the new issue before the state agency takes

final action, it is the intent of the Legislature that rulemaking agencies consider granting the request for additional time if, under the circumstances, granting the request is practical and does not unduly delay action on the regulation.

SEC. 16.5. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, both oral and written statements, arguments, or contentions, shall be permitted. The agency may impose reasonable limitations on oral presentations. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless the agency complies with Section 11347.1. This subdivision does not apply to material prepared pursuant to Section 11346.9.

(e) If a comment made at a public hearing raises a new issue concerning a proposed regulation and a member of the public requests additional time to respond to the new issue before the state agency takes final action, it is the intent of the Legislature that rulemaking agencies consider granting the request for additional time if, under the circumstances, granting the request is practical and does not unduly delay action on the regulation.

SEC. 17. Section 11347 is added to the Government Code, to read:

11347. (a) If, after publication of a notice of proposed action pursuant to Section 11346.4, but before the notice of proposed action becomes ineffective pursuant to subdivision (b) of that section, an agency decides not to proceed with the proposed action, it shall deliver notice of its decision to the office for publication in the California Regulatory Notice Register.

(b) Publication of a notice under this section terminates the effect of the notice of proposed action referred to in the notice. Nothing in this section precludes an agency from proposing a new regulatory action that is similar or identical to a regulatory action that was previously the subject of a notice published under this section.

SEC. 18. Section 11347.6 is added to the Government Code, to read:

11347.6. Each state agency that adopts regulations shall, in the final statement of reasons, separately identify comments made by the Office of Small Business Advocate and the Trade and Commerce Agency pursuant to subdivision (e) of Section 15363.6 and respond to each and every comment made by that office or agency directed at the proposed action or at the procedures followed by the agency in proposing or adopting the action, including providing a basis for why those comments were rejected, if applicable.

SEC. 19. Section 11348 is added to the Government Code, to read:

11348. Each agency subject to this chapter shall keep its rulemaking records on all of that agency's pending rulemaking actions, in which the notice has been published in the California Regulatory Notice Register, current and in one central location.

SEC. 20. Chapter 3.7 (commencing with Section 15379.50) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.7. SMALL BUSINESS LIAISON

15379.50. (a) Each state agency that significantly regulates small business or that significantly impacts small business shall designate at least one person who shall serve as a small business liaison. The agency shall utilize existing personnel and resources to perform the duties of small business liaison.

(b) Each state agency that significantly regulates small business or that significantly impacts small business shall widely publicize the position of small business liaison in appropriate agency publications and on the agency's website if the agency has a website.

(c) The small business liaison shall be responsible for all of the following:

(1) Receiving and responding to complaints received by the agency from small businesses.

(2) Providing technical advice and assisting small businesses in resolving problems and questions.

(3) Reporting small business concerns and, where appropriate, reporting recommendations to the agency secretary or to the agency head, as defined in Section 11405.50.

(d) The small business liaison shall not advocate for or against the adoption, amendment, or repeal of any regulation or intervene in any pending investigation or enforcement action.

SEC. 21. Article 7 (commencing with Section 65054) is added to Chapter 1.5 of Division 1 of Title 7 of the Government Code, to read:

Article 7. California Small Business Advocate

65054. (a) The Legislature finds and declares that it is in the public interest to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and maintain a healthy state economy.

(b) In order to advocate the causes of small business and to provide small businesses with the information they need to survive in the marketplace, there is created within the Office of Planning and Research the Office of Small Business Advocate.

(c) Post on its Internet website the name and telephone number of the small business liaison designated pursuant to Chapter 3.7 (commencing with Section 15379.50) of Part 6.7.

65054.1. The following definitions apply to Sections 15334.5 to 15334.8, inclusive, unless otherwise indicated:

(a) ''Advocate'' means the California Small Business Advocate who is also the Director of the Office of Small Business Advocate.

(b) ''Director'' means the Director of the Office of Small Business Advocate.

(c) ''Office'' means the Office of Small Business Advocate.

65054.3. (a) The Director of the Office of Small Business Advocate shall be appointed by, and shall serve at the pleasure of, the Governor.

(b) The Governor shall appoint the employees that are needed to accomplish the purposes of Section 65054, this section, and Section 65054.4.

(c) The duties and functions of the advocate shall include all of the following:

(1) Serve as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations which affect small businesses.

(2) Represent the views and interests of small businesses before other state agencies whose policies and activities may affect small business.

(3) Enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government which are of benefit to small businesses, and information on how small businesses can participate in, or make use of, those programs and services.

(4) Issue a report every two years evaluating the efforts of state agencies and, where appropriate, specific departments that significantly regulate small businesses to assist minority and other small business enterprises, and making recommendations that may be appropriate to assist the development and strengthening of minority and other small business enterprises.

(5) Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest.

(6) Determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop that criteria, if appropriate.

(7) Seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, including the small business liaison designated pursuant to Section 15379.50, to ensure coordination of state efforts.

(8) Receive and respond to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses.

(9) Counsel small businesses on how to resolve questions and problems concerning the relationship of small business to state government.

(10) Maintain, publicize, and distribute an annual list of persons serving as small business ombudsmen throughout state government.

65054.4. (a) Each agency of the state shall furnish to the advocate the reports, documents, and information that are public records and that

the director deems necessary to carry out his or her functions under this chapter.

(b) The advocate shall prepare and submit a written annual report to the Governor and to the Legislature that describes the activities and recommendations of the office.

(c) The advocate may establish a centralized interactive telephone referral system to assist small and minority businesses in their operations, including governmental requirements, such as taxation, accounting, and pollution control, and to provide information concerning the agency from which more specialized assistance may be obtained. The advocate may establish and advertise a telephone number to serve this centralized interactive telephone referral system.

65054.5. (a) There is hereby created a Governor's Small Business Reform Task Force. The task force shall be chaired by the Director of the Office of Small Business Advocate and shall include representatives appointed by the Governor from the California Small Business Association, other small business associations, and agency secretaries or their designees from state agencies heavily involved in small business regulation.

(b) The task force shall identify problems and ideas from the small business community concerning the regulation, communication, and assistance of state government with small business. The task force shall create a website to solicit public input, as well as, conduct at least four public hearings around the state to seek advice and recommendations.

(c) The task force shall conduct a study to consider the problems encountered by small businesses working with different levels of government, different offices in state and local government, and multiple jurisdictions, especially in the context of applying for and obtaining required permits and licenses. The study may include participation by the California League of Cities, county boards of supervisors, and small business representatives.

(d) The task force shall prepare and submit a report on or before May 1, 2002, to the Governor and the budget committee of each house of the Legislature with a discussion of its findings and recommendations.

SEC. 22. Sections 6.2, 6.5, and 6.7 of this bill shall become operative only if AB 1822 is enacted and becomes effective on or before January 1, 2001, in which case Section 6 of this bill shall not become operative.

SEC. 23. Section 9.5 of this bill incorporates amendments to Section 11346.2 of the Government Code proposed by both this bill and AB 1822. 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 11346.2 of the Government Code, and (3) this bill is enacted

after AB 1822, in which case Section 9 of this bill shall not become operative.

SEC. 24. Section 13.5 of this bill incorporates amendments to Section 11346.5 of the Government Code proposed by both this bill and AB 1822. 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 11346.5 of the Government Code, and (3) this bill is enacted after AB 1822, in which case Section 13 of this bill shall not become operative.

SEC. 25. Section 16.5 of this bill incorporates amendments to Section 11346.8 of the Government Code proposed by both this bill and AB 1822. 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 11346.8 of the Government Code, and (3) this bill is enacted after AB 1822, in which case Section 16 of this bill shall not become operative.

CHAPTER 1060

An act to amend Section 3373 of the Financial Code, to amend Sections 8546, 11340.5, 11343, 11343.4, 11343.5, 11344, 11344.1, 11344.2, 11344.4, 11344.6, 11344.7, 11344.9, 11346, 11346.1, 11346.2, 11346.3, 11346.5, 11346.8, 11346.9, 11347.3, 11349, 11349.1, 11349.6, 11350, 11350.3, 11353, 11356, and 27491.41 of, to amend the heading of Article 4 (commencing with Section 11344) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of, to add Sections 11340.85, 11340.9, 11347, 11347.1, and 11349.2 to, to add Article 2 (commencing with Section 11342.510) to Chapter 3.5 of Part 1 of Division 3 of Title 2 of, to repeal Sections 11342 and 11346.54 of, and to repeal the heading of Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of, the Government Code, to amend Section 57004 of the Health and Safety Code, to amend Section 5058 of the Penal Code, to amend Section 25620.2 of the Public Resources Code, and to amend Section 11462.4 of the Welfare and Institutions Code, relating to administrative rulemaking.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 3373 of the Financial Code is amended to read:

3373. (a) Notwithstanding any other provisions of this article, whenever Section 215.2, 215.3, 215.4, 215.5, 215.7, or 215.8 is changed by the Board of Governors of the Federal Reserve System, the commissioner may by regulation adopt that same change. Any regulation adopted under this section shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.

(b) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (a).

(2) The commissioner shall file any regulation adopted pursuant to subdivision (a), together with a citation to subdivision (a) as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(3) A regulation adopted under subdivision (a) shall become effective on the date it is filed with the Secretary of State unless the commissioner prescribed a later date in the regulation or in a written instrument filed with the regulation.

(c) A regulation adopted pursuant to subdivision (a) does not expire as provided by subdivision (a) and is not subject to subdivision (b) if the commissioner complies with all of the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code in adopting the regulation, including those listed in paragraph (1) of subdivision (b).

SEC. 2. Section 8546 of the Government Code is amended to read:

8546. It is the intent of the Legislature that the Bureau of State Audits have the independence necessary to conduct all of its audits in conformity with ''Government Auditing Standards'' published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants, free from influence of existing state control agencies that could be the subject of audits conducted by the bureau. Therefore, all of the following exclusions apply to the office:

(a) Notwithstanding Section 19790, the State Auditor shall establish an affirmative action program that shall meet the criteria and objectives established by the State Personnel Board and shall report annually to the State Personnel Board and the commission.

(b) Notwithstanding Section 12470, the State Auditor shall be responsible for maintaining its payroll system. In lieu of audits of the uniform payroll system performed by the Controller or any other department, the office shall contract pursuant to subdivision (e) of

Section 8544.5 for an annual audit of its payroll and financial operations by an independent public accountant.

(c) Notwithstanding Sections 11730 and 13292, the State Auditor is delegated the authority to establish and administer the fiscal and administrative policies of the bureau in conformity with the State Administrative Manual without oversight by the Department of Finance, the Department of Information Technology, or any other state agency.

(d) Notwithstanding Section 11032, the State Auditor may approve actual and necessary traveling expenses for travel outside the state for officers and employees of the bureau.

(e) Notwithstanding Section 11033, the State Auditor or officers and employees of the bureau may be absent from the state on business of the state upon approval of the State Auditor or Chief Deputy State Auditor.

(f) Sections 11040, 11042, and 11043 shall not apply to the Bureau of State Audits. The State Auditor may employ legal counsel under those terms that he or she deems necessary to conduct the legal business of, or render legal counsel to, the State Auditor.

(g) The provisions and definitions of Article 2 (commencing with Section 11342.510) of Chapter 3.5 of Division 3 shall not be construed to include the Bureau of State Audits. The State Auditor may adopt regulations necessary for the operation of the bureau pursuant to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3), but these regulations shall not be subject to the review or approval of the Office of Administrative Law.

(h) The State Auditor shall be exempt from all contract requirements of the Public Contract Code that require oversight, review, or approval by the Department of General Services or any other state agency. The State Auditor may contract on behalf of the State of California for goods and services that he or she deems necessary for the furtherance of the purposes of the bureau.

(i) (1) Subject to Article VII of the California Constitution, the State Auditor is delegated the authority to establish and administer the personnel policies and practices of the Bureau of State Audits in conformity with Part 2.6 (commencing with Section 19815) of Division 5 of Title 2 without oversight or approval by the Department of Personnel Administration.

(2) At the election of the State Auditor, officers and employees of the bureau may participate in benefits programs administered by the Department of Personnel Administration subject to the same conditions for participation that apply to civil service employees in other state agencies. For the purposes of benefits programs administration only, the State Auditor is subject to the determinations of the department. The Bureau of State Audits shall reimburse the Department of Personnel

Administration for the normal administrative costs incurred by the Department of Personnel Administration and for any extraordinary costs resulting from the inclusion of the bureau employees in these state benefit programs.

SEC. 3. Section 11340.5 of the Government Code is amended to read:

11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in Section 11342.600.

(c) The office shall do all of the following:

(1) File its determination upon issuance with the Secretary of State.

(2) Make its determination known to the agency, the Governor, and the Legislature.

(3) Publish its determination in the California Regulatory Notice Register within 15 days of the date of issuance.

(4) Make its determination available to the public and the courts.

(d) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A petition shall be filed with the court within 30 days of the date the determination is published.

(e) A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an adjudicatory proceeding if all of the following occurs:

(1) The court or administrative agency proceeding involves the party that sought the determination from the office.

(2) The proceeding began prior to the party's request for the office's determination.

(3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in Section 11342.600.

SEC. 4. Section 11340.85 is added to the Government Code, to read:

11340.85. (a) As used in this section, ''electronic communication'' includes electronic transmission of written or graphical material by electronic mail, facsimile, or other means, but does not include voice communication.

(b) Notwithstanding any other provision of this chapter that refers to mailing or to oral or written communication:

(1) An agency may permit and encourage use of electronic communication, but may not require use of electronic communication.

(2) An agency may publish or distribute a document required by this chapter or by a regulation implementing this chapter by means of electronic communication, but shall not make that the exclusive means by which the document is published or distributed.

(3) A notice required or authorized by this chapter or by a regulation implementing this chapter may be delivered to a person by means of electronic communication if the person has expressly indicated a willingness to receive the notice by means of electronic communication.

(4) A comment or petition regarding a regulation may be delivered to an agency by means of electronic communication if the agency has expressly indicated a willingness to receive a comment or petition by means of electronic communication.

(c) An agency that maintains an Internet website or other similar forum for the electronic publication or distribution of written material shall publish the following materials on that website or other forum:

(1) Any public notice required by this chapter or by a regulation implementing this chapter. For the purposes of this paragraph, ''public notice'' means a notice that is required to be given by an agency to persons who have requested notice of the agency's regulatory actions.

(2) The initial statement of reasons prepared pursuant to subdivision (b) of Section 11346.2.

(3) The final statement of reasons prepared pursuant to subdivision (a) of Section 11346.9.

(4) Notice of a decision not to proceed prepared pursuant to Section 11347.

(5) The text of a proposed regulation or instructions on how to obtain a copy of the text.

(d) Publication under subdivision (c) supplements any other required form of publication or distribution. Failure to comply with subdivision (c) is not grounds for disapproval of a proposed regulation. Subdivision (c) does not require an agency to establish or maintain a website or other forum for the electronic publication or distribution of written material.

(e) Nothing in this section precludes the office from requiring that the material submitted to the office for publication in the California Code

of Regulations or the California Regulatory Notice Register be submitted in electronic form.

SEC. 5. Section 11340.9 is added to the Government Code, to read:

11340.9. This chapter does not apply to any of the following:

(a) An agency in the judicial or legislative branch of the state government.

(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.

(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

(d) A regulation that relates only to the internal management of the state agency.

(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

(1) Enable a law violator to avoid detection.

(2) Facilitate disregard of requirements imposed by law.

(3) Give clearly improper advantage to a person who is in an adverse position to the state.

(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

(g) A regulation that establishes or fixes rates, prices, or tariffs.

(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

SEC. 6. The heading of Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 7. Section 11342 of the Government Code is repealed.

SEC. 8. Article 2 (commencing with Section 11342.510) is added to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 2. Definitions

11342.510. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

11342.520. ''Agency'' means state agency.

11342.530. ''Building standard'' has the same meaning provided in Section 18909 of the Health and Safety Code.

11342.540. ''Director'' means the director of the office.

11342.550. ''Office'' means the Office of Administrative Law.

11342.560. ''Order of repeal'' means any resolution, order, or other official act of a state agency that expressly repeals a regulation in whole or in part.

11342.570. ''Performance standard'' means a regulation that describes an objective with the criteria stated for achieving the objective.

11342.580. ''Plain English'' means language that satisfies the standard of clarity provided in Section 11349.

11342.590. ''Prescriptive standard'' means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

11342.600. ''Regulation'' means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

11342.610. (a) ''Small business'' means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in subdivision (b), that is both of the following:

(1) Independently owned and operated.

(2) Not dominant in its field of operation.

(b) ''Small business'' does not include the following professional and business activities:

(1) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

(2) An insurance company, either stock or mutual.

(3) A mineral, oil, or gas broker.

(4) A subdivider or developer.

(5) A landscape architect, an architect, or a building designer.

(6) An entity organized as a nonprofit institution.

(7) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

(8) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually.

(9) A petroleum producer, a natural gas producer, a refiner, or a pipeline.

(10) A manufacturing enterprise exceeding 250 employees.

(11) A health care facility exceeding 150 beds or one million five hundred thousand dollars ($1,500,000) in annual gross receipts.

(c) ''Small business'' does not include the following business activities:

(1) Agriculture, where the annual gross receipts exceed one million dollars ($1,000,000).

(2) General construction, where the annual gross receipts exceed nine million five hundred thousand dollars ($9,500,000).

(3) Special trade construction, where the annual gross receipts exceed five million dollars ($5,000,000).

(4) Retail trade, where the annual gross receipts exceed two million dollars ($2,000,000).

(5) Wholesale trade, where the annual gross receipts exceed nine million five hundred thousand dollars ($9,500,000).

(6) Services, where the annual gross receipts exceed two million dollars ($2,000,000).

(7) Transportation and warehousing, where the annual gross receipts exceed one million five hundred thousand dollars ($1,500,000).

SEC. 9. Section 11343 of the Government Code is amended to read:

11343. Every state agency shall:

(a) Transmit to the office for filing with the Secretary of State a certified copy of every regulation adopted or amended by it except one that is a building standard.

(b) Transmit to the office for filing with the Secretary of State a certified copy of every order of repeal of a regulation required to be filed under subdivision (a).

(c) Deliver to the office, at the time of transmittal for filing a regulation or order of repeal six duplicate copies of the regulation or order of repeal, together with a citation of the authority pursuant to which it or any part thereof was adopted.

(d) Deliver to the office a copy of the notice of proposed action required by Section 11346.4.

(e) Transmit to the California Building Standards Commission for approval a certified copy of every regulation, or order of repeal of a regulation, that is a building standard, together with a citation of

authority pursuant to which it or any part thereof was adopted, a copy of the notice of proposed action required by Section 11346.4, and any other records prescribed by the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code).

(f) Whenever a certification is required by this section, it shall be made by the head of the state agency or his or her designee which is adopting, amending, or repealing the regulation and the certification and delegation shall be in writing.

SEC. 10. Section 11343.4 of the Government Code is amended to read:

11343.4. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the 30th day after the date of filing unless:

(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.

(b) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(c) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

SEC. 11. Section 11343.5 of the Government Code is amended to read:

11343.5. Within 10 days from the receipt of printed copies of the California Code of Regulations or of the California Code of Regulations Supplement from the State Printing Office, the office shall file one copy of the particular issue of the code or supplement in the office of the county clerk of each county in this state, or if the authority to accept filings on his or her behalf has been delegated by the county clerk of any county pursuant to Section 26803.5, in the office of the person to whom that authority has been delegated.

SEC. 12. The heading of Article 4 (commencing with Section 11344) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is amended to read:

Article 4. The California Code of Regulations, the California Code of Regulations Supplement, and the California Regulatory Notice Register

SEC. 13. Section 11344 of the Government Code is amended to read:

11344. The office shall do all of the following:

(a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the California Code of Regulations. On and after July 1, 1998, the office shall make available on the Internet, free of charge, the full text of the California Code of Regulations, and may contract with another state agency or a private entity in order to provide this service.

(b) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations. This publication shall be known as the California Code of Regulations Supplement and shall contain amendments to the code.

(c) Provide for the publication dates and manner and form in which regulations shall be printed and distributed and ensure that regulations are available in printed form at the earliest practicable date after filing with the Secretary of State.

(d) Ensure that each regulation is printed together with a reference to the statutory authority pursuant to which it was enacted and the specific statute or other provision of law which the regulation is implementing, interpreting, or making specific.

SEC. 14. Section 11344.1 of the Government Code is amended to read:

11344.1. The office shall do all of the following:

(a) Provide for the publication of the California Regulatory Notice Register, which shall be an official publication of the State of California and which shall contain the following:

(1) Notices of proposed action prepared by regulatory agencies, subject to the notice requirements of this chapter, and which have been approved by the office.

(2) A summary of all regulations filed with the Secretary of State in the previous week.

(3) Summaries of all regulation decisions issued in the previous week detailing the reasons for disapproval of a regulation, the reasons for not filing an emergency regulation, and the reasons for repealing an emergency regulation. The California Regulatory Notice Register shall also include a quarterly index of regulation decisions.

(4) Material that is required to be published under Sections 11349.5, 11349.7, and 11349.9.

(5) Determinations issued pursuant to Section 11340.5.

(b) Establish the publication dates and manner and form in which the California Regulatory Notice Register shall be prepared and published and ensure that it is published and distributed in a timely manner to the presiding officer and rules committee of each house of the Legislature and to all subscribers.

SEC. 14.5. Section 11344.1 of the Government Code is amended to read:

11344.1. The office shall do all of the following:

(a) Provide for the publication of the California Regulatory Notice Register, which shall be an official publication of the State of California and which shall contain the following:

(1) Notices of proposed action prepared by regulatory agencies, subject to the notice requirements of this chapter, and which have been approved by the office.

(2) A summary of all regulations filed with the Secretary of State in the previous week.

(3) Summaries of all regulation decisions issued in the previous week detailing the reasons for disapproval of a regulation, the reasons for not filing an emergency regulation, and the reasons for repealing an emergency regulation. The California Regulatory Notice Register shall also include a quarterly index of regulation decisions.

(4) Material that is required to be published under Sections 11349.5, 11349.7, and 11349.9.

(5) Determinations issued pursuant to Section 11340.5.

(b) Establish the publication dates and manner and form in which the California Regulatory Notice Register shall be prepared and published and ensure that it is published and distributed in a timely manner to the presiding officer and rules committee of each house of the Legislature and to all subscribers.

(c) Post on its website, on a weekly basis:

(1) The California Regulatory Notice Register. Each issue of the California Regulatory Notice Register on the office's website shall remain posted for a minimum of 18 months.

(2) One or more Internet links to assist the public to gain access to the text of regulations proposed by state agencies.

SEC. 15. Section 11344.2 of the Government Code is amended to read:

11344.2. The office shall supply a complete set of the California Code of Regulations, and of the California Code of Regulations Supplement to the county clerk of any county or to the delegatee of the county clerk pursuant to Section 26803.5, provided the director makes the following two determinations:

(a) The county clerk or the delegatee of the county clerk pursuant to Section 26803.5 is maintaining the code and supplement in complete and current condition in a place and at times convenient to the public.

(b) The California Code of Regulations and California Code of Regulations Supplement are not otherwise reasonably available to the public in the community where the county clerk or the delegatee of the county clerk pursuant to Section 26803.5 would normally maintain the code and supplements by distribution to libraries pursuant to Article 6 (commencing with Section 14900) of Chapter 7 of Part 5.5.

SEC. 16. Section 11344.4 of the Government Code is amended to read:

11344.4. (a) The California Code of Regulations, the California Code of Regulations Supplement, and the California Regulatory Notice Register shall be sold at prices which will reimburse the state for all costs incurred for printing, publication, and distribution.

(b) All money received by the state from the sale of the publications listed in subdivision (a) shall be deposited in the treasury and credited to the General Fund, except that, where applicable, an amount necessary to cover the printing, publication, and distribution costs shall be credited to the fund from which the costs have been paid.

SEC. 17. Section 11344.6 of the Government Code is amended to read:

11344.6. The publication of a regulation in the California Code of Regulations or California Code of Regulations Supplement raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

The courts shall take judicial notice of the contents of each regulation which is printed or which is incorporated by appropriate reference into the California Code of Regulations as compiled by the office.

The courts shall also take judicial notice of the repeal of a regulation as published in the California Code of Regulations Supplement compiled by the office.

SEC. 18. Section 11344.7 of the Government Code is amended to read:

11344.7. Nothing in this chapter precludes any person or state agency from purchasing copies of the California Code of Regulations, the California Code of Regulations Supplement, or the California Regulatory Notice Register or of any unit of either, nor from printing special editions of any such units and distributing the same. However, where the purchase and printing is by a state agency, the state agency shall do so at the cost or at less than the cost to the agency if it is authorized to do so by other provisions of law.

SEC. 19. Section 11344.9 of the Government Code is amended to read:

11344.9. (a) Whenever the term ''California Administrative Code'' appears in law, official legal paper, or legal publication, it means the ''California Code of Regulations.''

(b) Whenever the term ''California Administrative Notice Register'' appears in any law, official legal paper, or legal publication, it means the ''California Regulatory Notice Register.''

(c) Whenever the term ''California Administrative Code Supplement'' or ''California Regulatory Code Supplement'' appears in

any law, official legal paper, or legal publication, it means the ''California Code of Regulations Supplement.''

SEC. 20. Section 11346 of the Government Code is amended to read:

11346. (a) It is the purpose of this chapter to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations. Except as provided in Section 11346.1, the provisions of this chapter are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this chapter repeals or diminishes additional requirements imposed by any statute. This chapter shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.

(b) An agency that is considering adopting, amending, or repealing a regulation may consult with interested persons before initiating regulatory action pursuant to this article.

SEC. 21. Section 11346.1 of the Government Code is amended to read:

11346.1. (a) The adoption, amendment, or repeal of an emergency regulation is not subject to any provision of this chapter except this section and Section 11349.6.

(b) Except as provided in subdivision (c), if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal.

Any finding of an emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action. The enactment of an urgency statute shall not, in and of itself, constitute a need for immediate action.

The statement and the regulation or order of repeal shall be filed immediately with the office.

(c) Notwithstanding any other provision of law, no emergency regulation that is a building standard shall be filed, nor shall the building standard be effective, unless the building standard is submitted to the California Building Standards Commission, and is approved and filed pursuant to Sections 18937 and 18938 of the Health and Safety Code.

(d) The emergency regulation or order of repeal shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as a part of, the regulation or order of repeal.

(e) No regulation, amendment, or order of repeal adopted as an emergency regulatory action shall remain in effect more than 120 days

unless the adopting agency has complied with Sections 11346.2 to 11347.3, inclusive, either before adopting an emergency regulation or within the 120-day period. The adopting agency, prior to the expiration of the 120-day period, shall transmit to the office for filing with the Secretary of State the adopted regulation, amendment, or order of repeal, the rulemaking file, and a certification that Sections 11346.2 to 11347.3, inclusive, were complied with either before the emergency regulation was adopted or within the 120-day period.

(f) In the event an emergency amendment or order of repeal is filed and the adopting agency fails to comply with subdivision (e), the regulation as it existed prior to the emergency amendment or order of repeal shall thereupon become effective and after notice to the adopting agency by the office shall be reprinted in the California Code of Regulations.

(g) In the event a regulation is originally adopted and filed as an emergency and the adopting agency fails to comply with subdivision (e), this failure shall constitute a repeal thereof and after notice to the adopting agency by the office, shall be deleted.

(h) The office shall not file an emergency regulation with the Secretary of State if the emergency regulation is the same as or substantially equivalent to an emergency regulation previously adopted by that agency, unless the director expressly approves the agency's readoption of the emergency regulation.

SEC. 22. Section 11346.2 of the Government Code is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each regulation listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by the regulation.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of the alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any alternatives the agency has identified that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the

provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 22.5. Section 11346.2 of the Government Code is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 23. Section 11346.3 of the Government Code is amended to read:

11346.3. (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation.

(b) (1) All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

SEC. 24. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, ''cost or savings'' means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: ''The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.''

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.

An agency's initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A statement of the potential cost impact of the proposed action on private persons or businesses directly affected, as considered by the agency during the regulatory development process.

For purposes of this paragraph, ''cost impact'' means the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective

and less burdensome to affected private persons than the proposed action.

(14) The name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed.

(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet website or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(b) The agency officer designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The officer shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 24.5. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, ''cost or savings'' means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: ''The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not)

considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.''

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.

An agency's initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

''The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.''

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14), shall make available to the public, upon request, the

agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(14) The name and telephone number of the following:

(A) The agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(B) An agency person or persons designated to respond to questions on the substance of the proposed regulations, where appropriate.

(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet website or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 25. Section 11346.54 of the Government Code is repealed.

SEC. 26. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, both oral and written statements, arguments, or contentions, shall be permitted. The agency may impose reasonable limitations on oral presentations. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless the agency complies with Section 11347.1. This

subdivision does not apply to material prepared pursuant to Section 11346.9.

SEC. 26.5. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, both oral and written statements, arguments, or contentions, shall be permitted. The agency may impose reasonable limitations on oral presentations. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless the agency complies with Section 11347.1. This subdivision does not apply to material prepared pursuant to Section 11346.9.

(e) If a comment made at a public hearing raises a new issue concerning a proposed regulation and a member of the public requests

additional time to respond to the new issue before the state agency takes final action, it is the intent of the Legislature that rulemaking agencies consider granting the request for additional time if, under the circumstances, granting the request is practical and does not unduly delay action on the regulation.

SEC. 27. Section 11346.9 of the Government Code is amended to read:

11346.9. Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, amendment, or repeal of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with Section 11347.1.

(2) A determination as to whether adoption, amendment, or repeal of the regulation imposes a mandate on local agencies or school districts. If the determination is that adoption, amendment, or repeal of the regulation would impose a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action. The agency may aggregate and summarize repetitive or irrelevant comments as a group, and may respond to repetitive comments or summarily dismiss irrelevant comments as a group. For the purposes of this paragraph, a comment is ''irrelevant'' if it is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action.

(4) A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

(5) An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

(b) Prepare and submit to the office with the adopted regulation an updated informative digest containing a clear and concise summary of the immediately preceding laws and regulations, if any, relating directly to the adopted, amended, or repealed regulation and the effect of the adopted, amended, or repealed regulation. The informative digest shall be drafted in a format similar to the Legislative Counsel's Digest on legislative bills.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation which the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) If an agency determines that a requirement of this section can be satisfied by reference to an agency statement made pursuant to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy the requirement by incorporating the relevant statement by reference.

SEC. 28. Section 11347 is added to the Government Code, to read:

11347. (a) If, after publication of a notice of proposed action pursuant to Section 11346.4, but before the notice of proposed action becomes ineffective pursuant to subdivision (b) of that section, an agency decides not to proceed with the proposed action, it shall deliver notice of its decision to the office for publication in the California Regulatory Notice Register.

(b) Publication of a notice under this section terminates the effect of the notice of proposed action referred to in the notice. Nothing in this section precludes an agency from proposing a new regulatory action that is similar or identical to a regulatory action that was previously the subject of a notice published under this section.

SEC. 29. Section 11347.1 is added to the Government Code, to read:

11347.1. (a) An agency that adds any technical, theoretical, or empirical study, report, or similar document to the rulemaking file after publication of the notice of proposed action and relies on the document in proposing the action shall make the document available as required by this section.

(b) At least 15 calendar days before the proposed action is adopted by the agency, the agency shall mail to all of the following persons a notice identifying the added document and stating the place and business hours that the document is available for public inspection:

(1) Persons who testified at the public hearing.

(2) Persons who submitted written comments at the public hearing.

(3) Persons whose comments were received by the agency during the public comment period.

(4) Persons who requested notification from the agency of the availability of changes to the text of the proposed regulation.

(c) The document shall be available for public inspection at the location described in the notice for at least 15 calendar days before the proposed action is adopted by the agency.

(d) Written comments on the document or information received by the agency during the availability period shall be summarized and responded to in the final statement of reasons as provided in Section 11346.9.

(e) The rulemaking file shall contain a statement confirming that the agency complied with the requirements of this section and stating the date on which the notice was mailed.

(f) If there are no persons in categories listed in subdivision (b), then the rulemaking file shall contain a confirming statement to that effect.

SEC. 30. Section 11347.3 of the Government Code is amended to read:

11347.3. (a) Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. Commencing no later than the date that the notice of the proposed action is published in the California Regulatory Notice Register, and during all subsequent periods of time that the file is in the agency's possession, the agency shall make the file available to the public for inspection and copying during regular business hours.

(b) The rulemaking file shall include:

(1) Copies of any petitions received from interested persons proposing the adoption, amendment, or repeal of the regulation, and a copy of any decision provided for by subdivision (d) of Section 11340.7, which grants a petition in whole or in part.

(2) All published notices of proposed adoption, amendment, or repeal of the regulation, and an updated informative digest, the initial statement of reasons, and the final statement of reasons.

(3) The determination, together with the supporting data required by paragraph (5) of subdivision (a) of Section 11346.5.

(4) The determination, together with the supporting data required by paragraph (8) of subdivision (a) of Section 11346.5.

(5) The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of Section 11346.5.

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3.

(8) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(9) The date on which the agency made the full text of the proposed regulation available to the public for 15 days prior to the adoption, amendment, or repeal of the regulation, if required to do so by subdivision (c) of Section 11346.8.

(10) The text of regulations as originally proposed and the modified text of regulations, if any, that were made available to the public prior to adoption.

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(c) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(d) The rulemaking file shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

(e) Upon filing a regulation with the Secretary of State pursuant to Section 11349.3, the office shall return the related rulemaking file to the agency, after which no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of. The agency shall maintain the file unless it elects to transmit the file to the State Archives pursuant to subdivision (f).

(f) The agency may transmit the rulemaking file to the State Archives. The file shall include instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. Pursuant to Section 12223.5, the Secretary of State may designate a time for the delivery of the rulemaking file to the State

Archives in consideration of document processing or storage limitations.

SEC. 31. Section 11349 of the Government Code is amended to read:

11349. The following definitions govern the interpretation of this chapter:

(a) ''Necessity'' means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(b) ''Authority'' means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.

(c) ''Clarity'' means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

(d) ''Consistency'' means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

(e) ''Reference'' means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

(f) ''Nonduplication'' means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

SEC. 32. Section 11349.1 of the Government Code is amended to read:

11349.1. (a) The office shall review all regulations adopted, amended, or repealed pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

(1) Necessity.

(2) Authority.
(3) Clarity.
(4) Consistency.
(5) Reference.
(6) Nonduplication.

In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.

(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.

(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations shall provide for an orderly review and shall specify the methods, standards, presumptions, and principles the office uses, and the limitations it observes, in reviewing regulations to establish compliance with the standards specified in subdivision (a). The regulations adopted by the office shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.

(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:

(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.

(2) The agency has not complied with Section 11346.3.

(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:

(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.

(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has approved a request by the agency that funds be included in the Budget Bill for the

next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).

(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its original receipt by the office. A rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.

This subdivision shall not limit the review of regulations under this article, including, but not limited to, the conformity of rulemaking files to subdivisions (a) and (b) of Section 11347.3.

SEC. 33. Section 11349.2 is added to the Government Code, to read:

11349.2. An agency may add material to a rulemaking file that has been submitted to the office for review pursuant to this article if addition of the material does not violate other requirements of this chapter.

SEC. 34. Section 11349.6 of the Government Code is amended to read:

11349.6. (a) In the event the adopting agency has complied with Sections 11346.2 to 11347.3, inclusive, prior to the adoption of the regulation as an emergency, the office shall approve or disapprove the regulation in accordance with this article.

(b) Emergency regulations adopted pursuant to subdivision (b) of Section 11346.1 shall be reviewed by the office within 10 calendar days after their submittal to the office. The office shall not file the emergency regulations with the Secretary of State if it determines that the regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare, or if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines the agency failed to comply with subdivisions (b) and (c) of Section 11346.1.

(c) If the office considers any information not submitted to it by the rulemaking agency when determining whether to file emergency regulations, the office shall provide the rulemaking agency with an opportunity to rebut or comment upon that information.

(d) Within 30 working days of the filing of a certificate of compliance, the office shall review the regulation and hearing record and approve or order the repeal of an emergency regulation if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines that the agency failed to comply with this chapter.

SEC. 35. Section 11350 of the Government Code is amended to read:

11350. (a) Any interested person may obtain a judicial declaration as to the validity of any regulation or order or repeal by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulation or order of repeal. The regulation or order of repeal may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement prepared pursuant to subdivision (b) of Section 11346.1 do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation or order of repeal may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

(c) The approval of a regulation or order of repeal by the office or the Governor's overruling of a decision of the office disapproving a regulation or order of repeal shall not be considered by a court in any action for declaratory relief brought with respect to a regulation or order of repeal.

(d) In a proceeding under this section, a court may only consider the following evidence:

(1) The rulemaking file prepared under Section 11347.3.

(2) The written statement prepared pursuant to subdivision (b) of Section 11346.1.

(3) An item that is required to be included in the rulemaking file but is not included in the rulemaking file, for the sole purpose of proving its omission.

(4) Any evidence relevant to whether a regulation used by an agency is required to be adopted under this chapter.

SEC. 36. Section 11350.3 of the Government Code is amended to read:

11350.3. Any interested person may obtain a judicial declaration as to the validity of a regulation or order of repeal which the office has disapproved pursuant to Section 11349.3, or 11349.6, or of a regulation that has been ordered repealed pursuant to Section 11349.7 by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the court so determines, it may order the office to immediately file the regulation with the Secretary of State.

SEC. 37. Section 11353 of the Government Code is amended to read:

11353. (a) Except as provided in subdivision (b), this chapter does not apply to the adoption or revision of state policy for water quality control and the adoption or revision of water quality control plans and guidelines pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(b) (1) Any policy, plan, or guideline, or any revision thereof, that the State Water Resources Control Board has adopted or that a court determines is subject to this part, after June 1, 1992, shall be submitted to the office.

(2) The State Water Resources Control Board shall include in its submittal to the office all of the following:

(A) A clear and concise summary of any regulatory provisions adopted or approved as part of that action, for publication in the California Code of Regulations.

(B) The administrative record for the proceeding. Proposed additions to a policy, plan, or guideline shall be indicated by underlined text and proposed deletions shall be indicated by strike-through text in documents submitted as part of the administrative record for the proceeding.

(C) A summary of the necessity for the regulatory provision.

(D) A certification by the chief legal officer of the State Water Resources Control Board that the action was taken in compliance with all applicable procedural requirements of Division 7 (commencing with Section 13000) of the Water Code.

(3) Paragraph (2) does not limit the authority of the office to review any regulatory provision which is part of the policy, plan, or guideline submitted by the State Water Resources Control Board.

(4) The office shall review the regulatory provisions to determine compliance with the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Section 11349.1. The office shall also review the responses to public comments prepared by the State Water Resources Control Board or the appropriate regional water quality control board to determine compliance with the public participation requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.). The office shall restrict its review to the regulatory provisions and the administrative record of the proceeding. Sections 11349.3, 11349.4, 11349.5, and 11350.3 shall apply to the review by the office to the extent that those sections are consistent with this section.

(5) The policy, plan, guideline, or revision shall not become effective unless and until the regulatory provisions are approved by the office in accordance with subdivision (a) of Section 11349.3.

(6) Upon approval of the regulatory provisions, the office shall transmit to the Secretary of State for filing the clear and concise summary of the regulatory provisions submitted by the State Water Resources Control Board.

(7) Any proceedings before the State Water Resources Control Board or a California regional water quality control board to take any action subject to this subdivision shall be conducted in accordance with the procedural requirements of Division 7 (commencing with Section 13000) of the Water Code, together with any applicable requirements of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), and the requirements of this chapter, other than the requirement for review by the office in accordance with this subdivision, shall not apply.

(8) This subdivision shall not provide a basis for review by the office under this subdivision or Article 6 (commencing with Section 11349) of any such policy, plan, or guideline adopted or revised prior to June 1, 1992.

(c) Subdivision (a) does not apply to a provision of any policy, plan, guideline, or revision, as applied to any person who, as of June 1, 1992, was a party to a civil action challenging that provision on the grounds that it has not been adopted as a regulation pursuant to this chapter.

(d) Copies of the policies, plans, and guidelines to which subdivision (a) applies shall be maintained at central locations for inspection by the public. The State Water Resources Control Board shall maintain, at its headquarters in Sacramento, a current copy of each policy, plan, or guideline in effect. Each regional water quality control board shall maintain at its headquarters a current copy of each policy, plan, or

guideline in effect in its respective region. Any revision of a policy, plan, or guideline shall be made available for inspection by the public within 30 days of its effective date.

SEC. 38. Section 11356 of the Government Code is amended to read:

11356. (a) Article 6 (commencing with Section 11349) is not applicable to a building standard.

(b) Article 5 (commencing with Section 11346) is applicable to those building standards, except that the office shall not disapprove those building standards nor refuse to publish any notice of proposed building standards if either has been approved by, and submitted to, the office by the California Building Standards Commission pursuant to Section 18935 of the Health and Safety Code.

SEC. 39. Section 27491.41 of the Government Code is amended to read:

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

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

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

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

(d) The autopsy shall be conducted pursuant to a standardized protocol developed by the State Department of Health Services. The protocol is exempt from the procedural requirements pertaining to the adoption of administrative rules and regulations pursuant to Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The protocol shall be developed and approved by July 1, 1990.

(e) The protocol shall be followed by all coroners throughout the state when conducting the autopsies required by this section. The coroner shall state on the certificate of death that sudden infant death syndrome

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

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

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

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

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

SEC. 40. Section 57004 of the Health and Safety Code is amended to read:

57004. (a) For purposes of this section, the following terms have the following meanings:

(1) ''Rule'' means either of the following:

(A) A regulation, as defined in Section 11342.600 of the Government Code.

(B) A policy adopted by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) that has the effect of a regulation and that is adopted in order to implement or make effective a statute.

(2) ''Scientific basis'' and ''scientific portions'' mean those foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment.

(b) The agency, or a board, department, or office within the agency, shall enter into an agreement with the National Academy of Sciences,

the University of California, the California State University, or any similar scientific institution of higher learning, any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that is recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule proposed for adoption by any board, department, or office within the agency. The scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 or Chapter 3.5 (commencing with Section 39650) of Division 26 shall be deemed to have complied with this section if it complies with the peer review processes established pursuant to these statutes.

(c) No person may serve as an external scientific peer reviewer for the scientific portion of a rule if that person participated in the development of the scientific basis or scientific portion of the rule.

(d) No board, department, or office within the agency shall take any action to adopt the final version of a rule unless all of the following conditions are met:

(1) The board, department, or office submits the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation.

(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaluation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department, or office has failed to demonstrate that the scientific portion of the proposed rule is based upon sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the proposed rule accordingly. If the board, department, or office disagrees with any aspect of the finding of the external scientific peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at such a determination in the adoption of the final rule, including the reasons why it has determined that the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices.

(e) The requirements of this section do not apply to any emergency regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(f) Nothing in this section shall be interpreted to, in any way, limit the authority of a board, department, or office within the agency to adopt a rule pursuant to the requirements of the statute that authorizes or requires the adoption of the rule.

SEC. 41. Section 5058 of the Penal Code is amended to read:

5058. (a) The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this section. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

For any rule or regulation filed as regular rulemaking as defined in paragraph (5) of subdivision (a) of Section 1 of Title 1 of the California Code of Regulations, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them no less than 20 days prior to its effective date.

(b) The director shall maintain, publish and make available to the general public, a compendium of the rules and regulations promulgated by the director or director's designee pursuant to this section.

(c) The following are deemed not to be ''regulations'' as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director or by the director's designee applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

(A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public.

(2) Short-term criteria for the placement of inmates in a new prison or other correctional facility, or subunit thereof, during its first six months of operation, or in a prison or other correctional facility, or subunit thereof, planned for closing during its last six months of operation, provided that the criteria are made available to the public and that an estimate of fiscal impact is completed pursuant to Section 6055, and following, of the State Administrative Manual dated July 1986.

(3) Rules issued by the director or director's designee that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code.

(d) The following regulations are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code under the conditions specified:

(1) Regulations adopted by the director or the director's designee applying to any legislatively mandated or authorized pilot program or a departmentally authorized pilot program, provided that an estimate of fiscal impact is completed pursuant to Section 6055, and following, of the State Administrative Manual dated July 1986, and that the following conditions are met:

(A) A pilot program affecting male inmates only shall affect no more than 10 percent of the total state male inmate population; a pilot program affecting female inmates only shall affect no more than 10 percent of the total state female inmate population; and a pilot program affecting male and female inmates shall affect no more than 10 percent of the total state inmate population.

(B) The director certifies in writing that the regulations apply to a pilot program that qualifies for exemption under this subdivision.

(C) The certification and regulations are filed with the Office of Administrative Law and the regulations are made available to the public by publication pursuant to subparagraph (F) of paragraph (2) of subdivision (b) of Section 6 of Title 1 of the California Code of Regulations.

The regulations shall become effective immediately upon filing with the Secretary of State and shall lapse by operation of law two years after the date of the director's certification unless formally adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Action or actions, or policies implementing them, taken by the department and based upon a determination of imminent danger by the director or the director's designee that there is a compelling need for immediate action, and that unless that action is taken, serious injury, illness, or death is likely to result. The action or actions, or policies implementing them, may be taken provided that the following conditions shall subsequently be met:

(A) A written determination of imminent danger shall be issued describing the compelling need and why the specific action or actions must be taken to address the compelling need.

(B) The written determination of imminent danger shall be mailed within 10 working days to every person who has filed a request for notice of regulatory actions with the department and to the Chief Clerk of the

Assembly and the Secretary of the Senate for referral to the appropriate policy committees.

Any policy in effect pursuant to a determination of imminent danger shall lapse by operation of law 15 calendar days after the date of the written determination of imminent danger unless an emergency regulation is filed with the Office of Administrative Law pursuant to subdivision (e). This section shall in no way exempt the department from compliance with other provisions of law related to fiscal matters of the state.

(e) Emergency regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that:

(1) Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the initial effective period for emergency regulations shall be 160 days.

(2) No showing of emergency is necessary in order to adopt emergency regulations other than a written statement by the director or the director's designee, to be filed with the Office of Administrative Law, certifying that operational needs of the department require adoption of the regulations on an emergency basis.

(3) This subdivision shall apply only to the adoption and one readoption of any emergency regulation.

It is the intent of the Legislature, in authorizing the deviations in this subdivision from the requirements and procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

SEC. 42. Section 25620.2 of the Public Resources Code is amended to read:

25620.2. (a) The commission shall administer the program in a manner that is consistent with the purposes of Chapter 854 of the Statutes of 1996, and shall ensure that the program meets all of the following criteria:

(1) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 381 of the Public Utilities Code.

(2) Addresses key technical and scientific barriers.

(3) Demonstrates a balance between short-term, mid-term, and long-term potential.

(4) Ensures that research currently, previously, or about to be undertaken by research organizations is not unnecessarily duplicated.

(b) To ensure the efficient implementation and administration of the program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(c) To ensure the success of electric industry restructuring in the transition to a new market structure and to implement the program, the commission shall adopt regulations, as defined in Section 11342.600 of the Government Code, in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with the procedures set forth in Section 11346.8 of the Government Code.

(D) A deadline for the submission of written comments.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written reports and copies of any transcripts or minutes in connection with any public hearings on the adoption of the regulation. The record shall be open to public inspection and available to the courts.

(6) Provide public notice of any substantial revision of the proposed regulation at least 15 days prior to the expiration of the deadline for public comments and comment period using the procedures provided in paragraph (2).

(7) Conduct public hearings, if a hearing is requested by an interested party, that shall be conducted in accordance with the procedures set forth in Section 11346.8 of the Government Code.

(8) Adopt any proposed regulation at a regularly scheduled and noticed meeting of the commission. The regulation shall become effective immediately unless otherwise provided by the commission.

(9) Publish any adopted regulation in a manner that makes copies of the regulation easily available to the public. Any adopted regulation shall also be made available on the Internet. The commission shall

transmit a copy of an adopted regulation to the Office of Administrative Law for publication, or, if the commission determines that printing the regulation is impractical, an appropriate reference as to where a copy of the regulation may be obtained.

(10) Notwithstanding any other provision of law, this subdivision provides an interim exception from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for regulations required to implement Sections 25621 and 25622 that are adopted under the procedures specified in this subdivision.

(11) This subdivision shall become inoperative on January 1, 2000, unless a later enacted statute deletes or extends that date. However, after January 1, 2000, the commission shall not be required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2000, using the procedures specified in this subdivision.

SEC. 43. Section 11462.4 of the Welfare and Institutions Code is amended to read:

11462.4. Notwithstanding Section 11342.610 of the Government Code, group homes and foster family agencies shall be deemed small businesses and the department shall project the impact on group homes and foster family agencies of any new regulations which will affect those community care facilities.

SEC. 44. (a) Section 14.5 of this bill incorporates amendments to Section 11344.1 of the Government Code proposed by both this bill and AB 505. 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 11344.1 of the Government Code, and (3) this bill is enacted after AB 505, in which case Section 14 of this bill shall not become operative.

(b) Section 22.5 of this bill incorporates amendments to Section 11346.2 of the Government Code proposed by both this bill and AB 505. 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 11346.2 of the Government Code, and (3) this bill is enacted after AB 505, in which case Section 22 of this bill shall not become operative.

(c) Section 24.5 of this bill incorporates amendments to Section 11346.5 of the Government Code proposed by both this bill and AB 505. 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 11346.5 of the Government Code, and (3) this bill is enacted after AB 505, in which case Section 24 of this bill shall not become operative.

(d) Section 26.5 of this bill incorporates amendments to Section 11346.8 of the Government Code proposed by both this bill and AB 505. 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 11346.8 of the Government Code, and (3) this bill is enacted after AB 505, in which case Section 26 of this bill shall not become operative.

CHAPTER 1061

An act to add Section 597.2 to the Penal Code, relating to cruelty to animals.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 597.2 is added to the Penal Code, to read:

597.2. (a) Every person who operates a live animal market shall do all of the following:

(1) Provide that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive.

(2) Provide that no live animals will be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation.

(b) As used in this section:

(1) ''Animal'' means frogs, turtles, and birds sold for the purpose of human consumption, with the exception of poultry.

(2) ''Live animal market'' means a retail food market where, in the regular course of business, animals are stored alive and sold to consumers for the purpose of human consumption.

(c) Any person who fails to comply with any requirement of subdivision (a) shall for the first violation, be given a written warning in a written language that is understood by the person receiving the warning. A second or subsequent violation of subdivision (a) shall be an infraction, punishable by a fine of not less than two hundred fifty dollars ($250), nor more than one thousand dollars ($1,000). However, a fine paid for a second violation of subdivision (a) shall be deferred for six months if a course is available that is administered by a state or local agency on state law and local ordinances relating to live animal markets. If the defendant successfully completes that course within six months of entry of judgment, the fine shall be waived. The state or local agency may charge the participant a fee to take the course, not to exceed one hundred dollars ($100).

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 1062

An act to add Article 11.5 (commencing with Section 111067) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to aquatic animals.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

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

(a) Live turtles and bullfrogs have been sold in retail food markets and restaurants in California since the days of the Gold Rush, and hundreds of thousands of live turtles and bullfrogs are imported into California each year and are sold for human consumption.

(b) Wholesalers and retail restaurants in California purchase an estimated 1,000,000 pounds of live turtles and bullfrogs each year to sell at restaurants and seafood markets throughout California, primarily in Asian-American communities.

(c) Small food markets and restaurants that specialize in selling and preparing fresh seafood and Asian delicacies depend upon the importation of live turtles and bullfrogs to sustain their businesses.

(d) It is the intent of the Legislature in enacting this act that local governments play an active role over the sale of live animals for food, as they deem necessary, because local governments are in a good position to regulate live animal markets.

SEC. 2. Article 11.5 (commencing with Section 111067) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 11.5. Local Enforcement: Live Food

111067. (a) Any city, county, or city and county may adopt an ordinance that provides for the regulation of the disposition of bullfrogs and turtles imported for sale in live animal markets for use as food. The ordinances may provide for all of the following:

(1) The designation of a local agency to carry out this article.

(2) Require a permit, issued by an agency designated by the city, county, or city and county to issue permits, for the sale of bullfrogs and turtles imported for sale in live animal markets for use as food.

(3) Establish a fee for the permit in an amount determined sufficient to offset the administrative cost of issuing the permit and enforcing the provisions of the ordinance.

(4) Require that animals sold pursuant to the permit be dispatched at the time of sale.

(5) Require that signs be posted at the permittee's place of business, stating that animals must be properly dispatched and that release into the wild in a live state is unlawful.

(6) Authorize the local agency, after notice and opportunity for a hearing, to suspend or revoke a permit issued pursuant to paragraph (1) for violation of any provision of the ordinance adopted pursuant to this article.

(b) The State Department of Health Services and the Department of Fish and Game may consult with a city, county, or city and county for purposes related to this article.

111068. Nothing in this article is intended to limit or preempt the jurisdiction of any state agency or commission, or any other state entity, from adopting any regulation or taking any action it deems necessary and appropriate regardless of any local ordinance adopted pursuant to this article.

SEC. 3. This act shall become operative only if Assembly Bill 2479 of the 1999–2000 Regular Session is enacted and becomes operative on or before January 1, 2001.

CHAPTER 1063

An act to amend Section 11836 of the Health and Safety Code, and to add Section 13352.6 to, and to repeal and add Article 2 (commencing with Section 23502) of Chapter 1 of Division 11.5 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter ''program'' means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors and that is subsequently licensed by the department to provide alcohol or drug recovery services to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(4) A person whose license has been suspended, revoked, or delayed due to a violation of Section 23140, and who has been admitted to a program under Article 2 (commencing with Section 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

SEC. 1.5. Section 11836 is added to the Health and Safety Code, to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter, ''program'' means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors, subject to any limitation imposed pursuant to subdivisions (c) and (d), and that is subsequently licensed by the department to

provide alcohol or drug recovery services in that county to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(4) A person whose license has been suspended, revoked, or delayed due to a violation of Section 23140, and who has been admitted to a program under Article 2 (commencing with Section 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

(c) For purposes of providing recommendations to the department pursuant to subdivision (a), a county board of supervisors may limit its recommendations to those programs that provide services for persons convicted of a first driving-under-the-influence offense, or services to those persons convicted of a second or subsequent driving-under-the-influence offense, or both services. If a county board of supervisors fails to provide recommendations, the department shall determine the program or programs to be licensed in that county.

(d) After determining a need, a county board of supervisors may also place one or more limitations on the services to be provided by a driving-under-the-influence program or the area the program may operate within the county, when it initially recommends a program to the department pursuant to subdivision (a).

(1) For purposes of this subdivision, a board of supervisors may restrict a program for those convicted of a first driving-under-the-influence offense to providing only a three-month program, or may restrict a program to those convicted of a second or

subsequent driving-under-the-influence offense to providing only an 18-month program, as a condition of its recommendation.

(2) A board of supervisors may not place any restrictions on a program that would violate any statute or regulation.

(3) When recommending a program, if a board of supervisors fails to place any limitation on a program pursuant to this subdivision, the department may license that program to provide any driving-under-the-influence program services that are allowed by law within that county.

(4) This subdivision is intended to apply only to the initial recommendation to the State Department of Alcohol and Drug Programs for licensure of a program by the county. It is not intended to affect any license that has been previously issued by the department or the renewal of any license for a driving-under-the-influence program. In counties where a contract or other written agreement is currently in effect between the county and a licensed driving-under-the-influence program operating in that county, this subdivision is not intended to alter the terms of that relationship or the renewal of that relationship.

SEC. 2. Section 13352.6 is added to the Vehicle Code, to read:

13352.6. (a) The department shall immediately suspend the driving privilege of any person who is 18 years of age or older and is convicted of a violation of Section 23140, upon receipt of a duly certified abstract of the record of any court showing that conviction. The privilege may not be reinstated until the person provides the department with proof, satisfactory to the department, of financial responsibility and of successful completion of a driving-under-the-influence program licensed under Section 11836 of the Health and Safety Code. That attendance shall be as follows:

(1) If, within seven years of the current violation of Section 23140, the person has not been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 655 of the Harbors and Navigation Code, or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, the person shall complete, at a minimum, the education component of that licensed driving-under-the-influence program.

(2) If the person does not meet the requirements of paragraph (1), the person shall complete, at a minimum, the program described in paragraph (1) of subdivision (c) of Section 11837 of the Health and Safety Code.

(b) For the purposes of this section, enrollment, participation, and completion of the program shall be subsequent to the date of the current violation. No credit for enrollment, participation, or completion may be

given for any program activities completed prior to the date of the current violation.

SEC. 3. Article 2 (commencing with Section 23502) of Chapter 1 of Division 11.5 of the Vehicle Code is repealed.

SEC. 4. Article 2 (commencing with Section 23502) is added to Chapter 1 of Division 11.5 of the Vehicle Code, to read:

Article 2. Penalties for a Violation of Section 23140

23502. (a) Notwithstanding any other provision of law, if a person who is at least 18 years of age is convicted of a first violation of Section 23140, in addition to any penalties, the court shall order the person to attend a program licensed under Section 11836 of the Health and Safety Code, subject to a fee schedule developed under paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code.

(b) The attendance in a licensed driving-under-the-influence program required under subdivision (a) shall be as follows:

(1) If, within seven years of the current violation of Section 23140, the person has not been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 655 of the Harbors and Navigation Code, or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, the person shall complete, at a minimum, the education component of that licensed driving-under-the-influence program.

(2) If the person does not meet the requirements of paragraph (1), the person shall complete, at a minimum, the program described in paragraph (1) of subdivision (c) of Section 11837 of the Health and Safety Code.

(c) The person's privilege to operate a motor vehicle shall be suspended by the department as required under Section 13352.6, and the court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.

(d) The court shall advise the person at the time of sentencing that the driving privilege will not be restored until the person has provided the department with proof satisfactory to the department that the person has successfully completed the driving under the influence program required under this section.

SEC. 5. Section 1.5 of this bill incorporates changes to Section 11836 of the Health and Safety 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 affects Section 11836 of the Health and Safety Code, and (3) this bill is enacted after AB 2227 in which case Section 11836 of the Health and Safety

Code, as amended by Section 1 of this bill, shall not become operative and Section 1.5 of this bill, adding Section 11836 to the Health and Safety Code, shall become operative.

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 1064

An act to amend Section 11837.4 of, to amend, repeal, and add Section 11836 of, and to add Section 11836.16 to, the Health and Safety Code, and to amend Sections 9250.14, 13386, 14601, 14601.1, 14601.4, 14601.5, 23575, 23646, and 23649 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter ''program'' means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors and that is subsequently licensed by the department to provide alcohol or drug recovery services to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 11836 is added to the Health and Safety Code, to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter, ''program'' means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors, subject to any limitation imposed pursuant to subdivisions (c) and (d), and that is subsequently licensed by the department to provide alcohol or drug recovery services in that county to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation,

association, local government entity, agency, or place for the purposes of this chapter.

(c) For purposes of providing recommendations to the department pursuant to subdivision (a), a county board of supervisors may limit its recommendations to those programs that provide services for persons convicted of a first driving-under-the-influence offense, or services to those persons convicted of a second or subsequent driving-under-the-influence offense, or both services. If a county board of supervisors fails to provide recommendations, the department shall determine the program or programs to be licensed in that county.

(d) After determining a need, a county board of supervisors may also place one or more limitations on the services to be provided by a driving-under-the-influence program or the area the program may operate within the county, when it initially recommends a program to the department pursuant to subdivision (a).

(1) For purposes of this subdivision, a board of supervisors may restrict a program for those convicted of a first driving-under-the-influence offense to providing only a three-month program, or may restrict a program to those convicted of a second or subsequent driving-under-the-influence offense to providing only an 18-month program, as a condition of its recommendation.

(2) A board of supervisors may not place any restrictions on a program that would violate any statute or regulation.

(3) When recommending a program, if a board of supervisors fails to place any limitation on a program pursuant to this subdivision, the department may license that program to provide any driving-under-the-influence program services that are allowed by law within that county.

(4) This subdivision is intended to apply only to the initial recommendation to the State Department of Alcohol and Drug Programs for licensure of a program by the county. It is not intended to affect any license that has been previously issued by the department or the renewal of any license for a driving-under-the-influence program. In counties where a contract or other written agreement is currently in effect between the county and a licensed driving-under-the-influence program operating in that county, this subdivision is not intended to alter the terms of that relationship or the renewal of that relationship.

(e) This section shall become operative on January 1, 2001.

SEC. 2.1. Section 11836 is added to the Health and Safety Code, to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter, ''program'' means any firm, partnership, association, corporation, local governmental entity, agency

or place that has been initially recommended by the county board of supervisors, subject to any limitation imposed pursuant to subdivisions (c) and (d), and that is subsequently licensed by the department to provide alcohol or drug recovery services in that county to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(4) A person whose license has been suspended, revoked, or delayed due to a violation of Section 23140, and who has been admitted to a program under Article 2 (commencing with Section 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

(c) For purposes of providing recommendations to the department pursuant to subdivision (a), a county board of supervisors may limit its recommendations to those programs that provide services for persons convicted of a first driving-under-the-influence offense, or services to those persons convicted of a second or subsequent driving-under-the-influence offense, or both services. If a county board of supervisors fails to provide recommendations, the department shall determine the program or programs to be licensed in that county.

(d) After determining a need, a county board of supervisors may also place one or more limitations on the services to be provided by a driving-under-the-influence program or the area the program may operate within the county, when it initially recommends a program to the department pursuant to subdivision (a).

(1) For purposes of this subdivision, a board of supervisors may restrict a program for those convicted of a first

driving-under-the-influence offense to providing only a three-month program, or may restrict a program to those convicted of a second or subsequent driving-under-the-influence offense to providing only an 18-month program, as a condition of its recommendation.

(2) A board of supervisors may not place any restrictions on a program that would violate and statute or regulation.

(3) When recommending a program, if a board of supervisors fails to place any limitation on a program pursuant to this subdivision, the department may license that program to provide any driving-under-the-influence program services that are allowed by law within that county.

(4) This subdivision is intended to apply only to the initial recommendation to the State Department of Alcohol and Drug Programs for licensure of a program by the county. It is not intended to affect any license that has been previously issued by the department or the renewal of any license for a driving-under-the-influence program. In counties where a contract or other written agreement is currently in effect between the county and a licensed driving-under-the-influence program operating in that county, this subdivision is not intended to alter the terms of that relationship or the renewal of that relationship.

(e) This section shall become operative on January 1, 2001.

SEC. 3. Section 11836.16 is added to the Health and Safety Code, to read:

11836.16. The State Department of Alcohol and Drug Programs shall adopt regulations for satellite offices of driving-under-the-influence programs. The regulations shall include, but not be limited to, any limitations on where a satellite office may be located and the minimum and maximum number of clients to whom a satellite office may provide services. When adopting regulations pursuant to this section, the department shall also consider an appropriate licensing procedure for these offices. For purposes of this section, a ''satellite office'' is an offsite location of an existing licensed driving-under-the-influence program.

SEC. 4. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) No program, regardless of how it is funded, may be licensed unless all of the requirements of this chapter and of the regulations adopted pursuant to this chapter have been met.

(b) Each licensed program shall include, but not be limited to, the following:

(1) For the alcohol or drug education and counseling services programs specified in subdivision (b) of Section 11837, each program shall provide for close and regular face-to-face interviews. For the 18-month programs specified in subdivision (a) of Section 11837, each

program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program for the first 12 months of the program and shall provide only community reentry supervision during the final six months of the program. In the last six months of the 18-month program, the provider shall monitor the participant's community reentry activity with self-help groups, employment, family, and other areas of self-improvement. Unless otherwise ordered by the court, the provider's monitoring services is limited to not more than six hours. For the 30-month programs specified in subdivision (b) of Section 23548, subdivision (b) of Section 23552, and subdivision (b) of Section 23568 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse, as prescribed by regulations of the department. The interviews in any of those programs shall be conducted individually with each person being supervised and shall occur at times other than when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) (A) The department shall approve all fee schedules for the programs and shall require that each program be self-supporting from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who can successfully document current inability to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the immediate and long-term continuation of services required pursuant to this chapter. The fees shall be used only for the purposes set forth in this chapter, except that any profit or surplus, that does not exceed the maximum level established by the department, may be utilized for any purposes allowable under any other provisions of law. In its regulations, the department shall define, for the purposes of this paragraph, taking into account prudent accounting, management, and business practices and procedures, the terms ''profits'' and ''surplus.'' The department shall fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(B) Each program licensed by the department under this section may request an increase in the fees. The request for an increase shall initially be sent to the county alcohol program administrator. The county alcohol program administrator shall, within 30 days of receiving the request, forward it to the department with the administrator's recommendation that the fee increase be approved or disapproved.

(C) The administrator's recommendation shall, among other things, take into account the rationale that the program has provided to the administrator for the increase and whether that increase would exceed the profit or surplus limit established by the department.

(D) If the county alcohol program administrator fails to forward the request to the department within the 30 days, the program may send the request directly to the department. In this instance, the department may act without the administrator's recommendation.

(E) The department shall, within 30 days of receiving the request pursuant to subparagraph (B) or (D) approve or disapprove the request. In making its decision, the department shall consider the matters described in subparagraph (C).

(3) The licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its regulations what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any group discussion or counseling activity, other than classes or lectures, shall be regularly scheduled to consist of not more than 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. At no time shall there be more than 17 persons in attendance at any one meeting. For the 30-month programs specified in subdivision (b) of Section 23548, subdivision (b) of Section 23552, and subdivision (b) of Section 23568 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of

chemicals of any kind, for not less than 120 hours and not more than 300 hours, as determined by the court, with one-half of that time to be served during the initial 18 months of program participation and one-half of that time to be served in the final 12 months. In determining whether or not the participant has met the objectives of the program, the compendium of evidence shall also include, and the court shall consider, the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance, including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or other appropriate governmental agency. The program officials, unless prohibited by the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license issued by the State of California to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(c) No program may be licensed unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers an alcohol or drug education and counseling services program, an 18-month program, or a 30-month program or any or all of those programs described in this section shall be required to obtain only one license. The department's regulations shall specify the requirements

for the establishment of each program. The license issued by the department shall identify the program or programs licensed to operate.

(d) Departmental approval for the establishment of a 30-month program by a licensed 18-month program is contingent upon approval by the county alcohol program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction of the court.

(e) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(f) The department may license a program on a provisional basis.

SEC. 5. Section 9250.14 of the Vehicle Code is amended to read:

9250.14. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller is continuously appropriated, without regard to fiscal years, for the administrative costs of the Controller, and for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county.

(c) Except as otherwise provided in this subdivision, money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local police and prosecutors to deter, investigate, and prosecute vehicle theft crimes. In any county with a population of 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. 5.5. 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. 6. Section 13386 of the Vehicle Code is amended to read:

13386. (a) (1) The Department of Motor Vehicles shall certify or cause to be certified ignition interlock devices required by Article 5 (commencing with Section 23575) of Chapter 2 of Division 11.5 and publish a list of approved devices.

(2) (A) The Department of Motor Vehicles shall ensure that ignition interlock devices that have been certified according to the requirements of this section continue to meet certification requirements. The department may periodically require manufacturers to indicate in writing whether the devices continue to meet certification requirements.

(B) The department may use denial of certification, suspension, or revocation of certification, or decertification of an ignition interlock device in another state as an indication that the certification requirements are not met, if either of the following apply:

(i) The denial of certification, suspension or revocation of certification, or decertification in another state constitutes a violation by the manufacturer of Article 2.4 (commencing with Section 100.91) of Chapter 1 of Title 13 of the California Code of Regulations.

(ii) The denial of certification for an ignition interlock device in another state was due to a failure of an ignition interlock device to meet

the standards adopted by the regulation set forth in clause (i), specifically Sections 1 and 2 of the model specification for breath alcohol ignition interlock devices, as published by notice in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, on pages 11774 to 11787, inclusive.

(C) Failure to continue to meet certification requirements shall result in suspension or revocation of certification of ignition interlock devices.

(b) The department shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of ignition interlock devices. If the certification of a device is suspended or revoked, the manufacturer of the device shall be responsible for, and shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(c) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(d) All manufacturers of ignition interlock devices that meet the requirements of subdivision (c) and are certified in a manner approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out this section.

(e) The department shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An ''Option to Install,'' to be sent by the Department of Motor Vehicles to repeat offenders along with the mandatory order of suspension or revocation. This shall include the alternatives available for early license reinstatement with the installation of an ignition interlock device and shall be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section.

(2) A ''Verification of Installation'' to be returned to the department by the reinstating offender upon application for reinstatement. Copies shall be provided for the manufacturer or the manufacturer's agent.

(3) A ''Notice of Noncompliance'' and procedures to ensure continued use of the ignition interlock device during the restriction period and to ensure compliance with maintenance requirements. The

maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

(f) Every manufacturer and manufacturer's agent certified by the department to provide ignition interlock devices shall adopt fee schedules that provide for the payment of the costs of the device by applicants in amounts commensurate with the applicant's ability to pay.

SEC. 7. Section 14601 of the Vehicle Code is amended to read:

14601. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for reckless driving in violation of Section 23103 or 23104, any reason listed in subdivision (a) or (c) of Section 12806 authorizing the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than five days or more than six months and by fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000).

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, by imprisonment in the county jail for not less than 10 days or more than one year and by fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(c) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(d) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(e) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section

23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

SEC. 8. Section 14601.1 of the Vehicle Code is amended to read:

14601.1. (a) No person shall drive a motor vehicle when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601, 14601.2, or 14601.5, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.2, or 14601.5, by imprisonment in the county jail for not less than five days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(c) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(d) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

SEC. 9. Section 14601.4 of the Vehicle Code is amended to read:

14601.4. (a) It is unlawful for any person, while driving a vehicle with a license suspended or revoked pursuant to Section 14601.2 to do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. In proving the person

neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

(b) Any person convicted under this section shall be imprisoned in the county jail and shall not be released upon work release, community service, or any other release program before the minimum period of imprisonment, prescribed in Section 14601.2, is served. If a person is convicted of that offense and is granted probation, the court shall require that the person convicted serve at least the minimum time of imprisonment, as specified in those sections, as a term or condition of probation.

(c) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it should be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

SEC. 10. Section 14601.5 of the Vehicle Code is amended to read:

14601.5. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.6, 13353.7, or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to any other requirements, to install a certified ignition interlock device on any vehicle that the person owns or operates for a period not to exceed three years.

SEC. 11. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) In addition to any other provisions of law, the court may require that any person convicted of a first offense violation of Section 23152 or 23153 to install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court shall give heightened consideration to applying this sanction to first offense violators with 0.20 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or of persons who refused the chemical tests at arrest. If the court orders the ignition interlock device restriction, the term shall be determined by the court for a period not to exceed three years. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(2) The court shall require any person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. The term of the restriction shall be determined by the court for a period not to exceed three years. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of

Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(b) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement and term for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

(c) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(d) Any person whose driving privilege is restricted by the court pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. The installer shall notify the court if the device indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation for the installer to notify the court if the person has complied with all of the requirements of this article.

(e) The court shall monitor the installation and maintenance of any ignition interlock device restriction ordered pursuant to subdivision (a) or (*l*). If any person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.

(f) (1) Pursuant to Section 13352, if any person is convicted of a violation of Section 23152 or 23153, and the offense occurred within seven years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately terminate the restriction issued pursuant to Section 13352 and shall immediately suspend or revoke the privilege to operate a motor vehicle of any person who attempts to remove, bypass, or tamper with the device, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352. The privilege shall remain suspended or revoked for the remaining period of the originating

suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(g) Any person whose driving privilege is restricted by the Department of Motor Vehicles pursuant to Section 13352 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles if the device indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this section.

(h) Nothing in this section permits a person to drive without a valid driver's license.

(i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.

(j) Pursuant to this section, out-of-state residents who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. No ignition interlock device is required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(*l*) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for any persons to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(m) For purposes of this section, ''vehicle'' does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock

device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.

(n) For purposes of this section, ''owned'' means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, ''operates'' includes operating vehicles that are not owned by the person subject to this section.

(o) For the purposes of this section, bypass includes, but is not limited to, either of the following:

(1) Any combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) Any incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning the vehicles's engine off.

SEC. 12. Section 23646 of the Vehicle Code is amended to read:

23646. (a) Each county alcohol program administrator or the administrator's designee shall develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article for each person described in subdivision (b). The alcohol and drug problem assessment program may include a referral and client tracking component.

(b) (1) The court shall order a person to participate in an alcohol and drug problem assessment program pursuant to this section and Sections 23647 to 23649, inclusive, and the related regulations of the State Department of Alcohol and Drug Programs, if the person was convicted of a violation of Section 23152 or 23153 that occurred within seven years of a separate violation of Section 23152 or 23153 and resulted in a conviction, the person was required to attend a licensed program pursuant to a court order, and the person has once failed to comply with the rules and policies of the licensed program, other than a rule relating to the payment of fees, in accordance with the rules and regulations of the state department.

(2) A court may order any person convicted of a violation of Section 23152 or 23153 to attend an alcohol and drug problem assessment program pursuant to this article.

(c) The State Department of Alcohol and Drug Programs shall establish minimum specifications for alcohol and other drug problem assessments and reports not later than September 30, 1999.

SEC. 13. Section 23649 of the Vehicle Code is amended to read:

23649. (a) Notwithstanding any other provision of law, in addition to any other fine or penalty assessment, there shall be levied an assessment of not more than one hundred dollars ($100) upon every fine, penalty, or forfeiture imposed and collected by the courts for a violation of Section 23152 or 23153 in any judicial district that participates in a county alcohol and drug problem assessment program. An assessment

of not more than one hundred dollars ($100) shall be imposed and collected by the courts from each person convicted of a violation of Section 23103, as specified in Section 23103.5, who is ordered to participate in a county alcohol and drug problem assessment program pursuant to Section 23647.

(b) The court shall determine if the defendant has the ability to pay the assessment. If the court determines that the defendant has the ability to pay the assessment then the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner that the court determines is reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(c) Notwithstanding Section 1463 or 1464 of the Penal Code or any other provision of law, all moneys collected pursuant to this section shall be deposited in a special account in the county treasury and shall be used exclusively by the county alcohol program administrator or the administrator's designee to pay for the costs of developing, implementing, operating, maintaining, and evaluating alcohol and drug problem assessment programs.

(d) On January 15 of each year, the treasurer of each county that administers an alcohol and drug problem assessment program shall determine those moneys in the special account that were not expended during the preceding fiscal year, and shall transfer those moneys to the general fund of the county.

(e) Any moneys remaining in the special account, if and when the alcohol and drug problem assessment program is terminated, shall be transferred to the general fund of the county.

(f) The county treasurer shall annually transfer an amount of money equal to the county's administrative cost incurred pursuant to this section, as he or she shall determine, from the special account to the general fund of the county.

SEC. 14. (a) Section 2.1 of this bill incorporates changes to Section 11836 of the Health and Safety Code proposed by both this bill and AB 803. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill affects Section 11836 of the Vehicle Code, and (3) this bill is enacted after AB 803, in which case Section 11836 of the Health and Safety Code as added by Section 2 of this bill, shall not become operative on January 1, 2001, and Section 2.1 of this bill, adding Section 11836 to the Health and Safety Code, shall become operative on that date.

(b) Sections 2 and 2.1 of this bill, adding Section 11836 to the Health and Safety Code, shall not become operative if AB 803 is enacted after this bill.

SEC. 15. Section 5.5 of this bill incorporates amendments to Section 9250.14 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 9250.14 of the Vehicle Code, and (3) this bill is enacted after SB 2084, in which case Section 9250.14 of the Vehicle Code as amended by Section 5 of this bill, shall remain operative only until the operative date of SB 2084, at which time Section 5.5 of this bill shall become operative.

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

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

In order that the provisions of this act, which strengthen and clarify driving-under-the-influence sanctions and remedial actions, may be implemented at the earliest possible time, thereby deterring driving under the influence, it is essential that this act take effect immediately.

CHAPTER 1065

An act to amend Section 56.10 of the Civil Code, and to add Chapter 2.25 (commencing with Section 1399.900) to Division 2 of the Health and Safety Code, relating to disease management organizations.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care

service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and

payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation

officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally

share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 1.1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed

by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the

disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries or affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 1.2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental

or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the

purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this

section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 1.3. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health

facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly

permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent,

or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of

the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and is subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2. Chapter 2.5 (commencing with Section 1399.900) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2.5. DISEASE MANAGEMENT

1399.900. (a) For the purposes of this chapter, ''disease management organization'' means an entity that provides disease management programs and services and that contracts with any of the following:

(1) A health care service plan.

(2) A contractor of a health care service plan.

(3) An employer.

(4) A publicly financed health care program.

(5) A government agency.

(b) A disease management organization shall not include an entity whose primary purpose is to market specific products or services to enrollees of a health care service plan.

(c) No medical group, individual licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or health facility as defined in Section 1250, that provides disease management programs and services incidental to their primary

professional practices, shall be considered a disease management organization.

1399.901. For the purposes of this chapter, ''disease management programs and services'' means services administered to patients in order to improve their overall health and to prevent clinical exacerbations and complications utilizing cost-effective, evidence-based, or consensus-based practice guidelines and patient self-management strategies. Disease management programs and services shall contain all of the following:

(a) A population identification process.

(b) Evidence-based or consensus-based clinical practice guidelines, risk identification, and matching of interventions with clinical need.

(c) Patient self-management and disease education.

(d) Process and outcomes measurement, evaluation, management, and reporting.

1399.902. (a) Every disease management organization shall obtain physician authorization prior to the time that the disease management organization, its employees, or independent contractors do either of the following:

(1) Provide home health care services utilized in the treatment of a patient.

(2) Dispense, administer, or prescribe a prescription medication.

(b) For purposes of this section, a valid prescription written by a treating physician shall constitute authorization to dispense a prescription medication.

(c) Home health care followup visits made solely for patient assessment, monitoring, or education are not subject to the physician authorization requirement in subdivision (a).

(d) Nothing in this section, in the absence of authorization granted by any other law, shall be construed to authorize the activities described in paragraphs (1) and (2) of subdivision (a).

1399.903. A disease management organization may receive medical information as provided in paragraph (17) of subdivision (c) of Section 56.10 of the Civil Code. However, a disease management organization shall be subject to the other provisions of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), including, but not limited to, subdivisions (d) and (e) of Section 56.10 of, and Section 56.36 of, the Civil Code.

1399.904. A disease management organization shall not use medical information obtained pursuant to Section 1399.903 to solicit or to offer for sale to a health care service plan enrollee any products or services in the provision of disease management services to the enrollee. However, an enrollee may elect to use a disease management organization to obtain information about health care products and

services and, pursuant to that election by the enrollee, the disease management organization may offer to the enrollee health care products or services that are directly related to the enrollee's condition.

SEC. 3. (a) Section 1.1 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and SB 1903. 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 56.10 of the Civil Code, and (3) SB 2094 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1903, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and SB 2094. 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 56.10 of the Civil Code, (3) SB 1903 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2094 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by this bill, SB 1903, and SB 2094. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) all three bills amend Section 56.10 of the Civil Code, and (3) this bill is enacted after SB 1903 and SB 2094, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1066

An act to amend Sections 56.10 and 56.11 of, and to add Section 56.07 to, the Civil Code, and to add Section 123111 to the Health and Safety Code, relating to medical information.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 56.07 is added to the Civil Code, to read:

56.07. (a) Except as provided in subdivision (c), upon the patient's written request, any corporation described in Section 56.06, or any other entity that compiles or maintains medical information for any reason, shall provide the patient, at no charge, with a copy of any medical profile, summary, or information maintained by the corporation or entity with respect to the patient.

(b) A request by a patient pursuant to this section shall not be deemed to be an authorization by the patient for the release or disclosure of any information to any person or entity other than the patient.

(c) This section shall not apply to any patient records that are subject to inspection by the patient pursuant to Section 123110 of the Health and Safety Code and shall not be deemed to limit the right of a health care provider to charge a fee for the preparation of a summary of patient records as provided in Section 123130 of the Health and Safety Code. This section shall not apply to a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer licensed pursuant to the Insurance Code. This section shall not apply to medical information compiled or maintained by a fire and casualty insurer or its retained counsel in the regular course of investigating or litigating a claim under a policy of insurance that it has written. For the purposes of this section, a fire and casualty insurer is an insurer writing policies that may be sold by a fire and casualty licensee pursuant to Section 1625 of the Insurance Code.

SEC. 2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's

fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug

Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2.1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another

provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental

or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the

purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries or affiliates shall further disclose medical information regarding a patient of the provider of health care or

an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2.2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency

medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical

information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of

health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2.3. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractor's or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers,

contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 3. Section 56.11 of the Civil Code is amended to read:

56.11. Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, shall obtain a valid authorization for the release of this information.

An authorization for the release of medical information by a provider of health care, a health care service plan, or contractor shall be valid if it:

(a) Is handwritten by the person who signs it or is in typeface no smaller than 8-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, a health care service plan, or a contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.

(4) The beneficiary or personal representative of a deceased patient.

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

SEC. 4. Section 123111 is added to the Health and Safety Code, to read:

123111. (a) Any adult patient who inspects his or her patient records pursuant to Section 123110 shall have the right to provide to the health care provider a written addendum with respect to any item or

statement in his or her records that the patient believes to be incomplete or incorrect. The addendum shall be limited to 250 words per alleged incomplete or incorrect item in the patient's record and shall clearly indicate in writing that the patient wishes the addendum to be made a part of his or her record.

(b) The health care provider shall attach the addendum to the patient's records and shall include that addendum whenever the health care provider makes a disclosure of the allegedly incomplete or incorrect portion of patient's records to any third party.

(c) The receipt of information in a patient's addendum which contains defamatory or otherwise unlawful language, and the inclusion of this information in the patient's records, in accordance with subdivision (b), shall not, in and of itself, subject the health care provider to liability in any civil, criminal, administrative, or other proceeding.

(d) Subdivision (f) of Section 123110 and Section 123120 shall be applicable with respect to any violation of this section by a health care provider.

SEC. 5. (a) Section 2.1 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and AB 2414. 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 56.10 of the Civil Code, and (3) SB 2094 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2414, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and SB 2094. 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 56.10 of the Civil Code, (3) AB 2414 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2094 in which case Sections 2, 2.1 and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by this bill, AB 2414, and SB 2094. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) all three bills amend Section 56.10 of the Civil Code, and (3) this bill is enacted after AB 2414 and SB 2094, in which case Sections 2,2.1 and 2.2 of this bill shall not become operative.

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

within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1067

An act to amend Sections 56.05, 56.10, 56.30, and 56.101 of the Civil Code, to amend Sections 1347.15, 1363.5, 1364.5, 1367.01, 1367.51, 1368, 1368.04, 1370.4, 1375.4, 1386, and 1395.6 of, to amend and renumber Section 13933 of, and to repeal Section 1367.5 of, the Health and Safety Code, to amend Sections 10123.135 and 10145.3 of the Insurance Code, and to amend Section 25002 of the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 56.05 of the Civil Code is amended to read:

56.05. For purposes of this part:

(a) ''Authorization'' means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.

(b) ''Authorized recipient'' means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) ''Contractor'' means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. ''Contractor'' shall not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) ''Health care service plan'' means any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) ''Licensed health care professional'' means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(f) ''Medical information'' means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, or contractor regarding a patient's medical history, mental or physical condition, or treatment. ''Individually identifiable'' means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity.

(g) ''Patient'' means any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains.

(h) ''Provider of health care'' means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. ''Provider of health care'' shall not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.

SEC. 2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with

Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service

plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's

fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug

Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2.1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served

pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for

health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in

which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the

purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this

section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2.2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health

facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly

permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent,

or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use

any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2.3. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractor's or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors or persons are engaged in reviewing the competence or

qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 3. Section 56.30 of the Civil Code is amended to read:

56.30. The disclosure and use of the following medical information shall not be subject to the limitations of this part:

(a) (Mental health and developmental disabilities) Information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) of the Welfare and Institutions Code.

(b) (Public social services) Information and records that are subject to Sections 10850, 14124.1, and 14124.2 of the Welfare and Institutions Code.

(c) (State health services, communicable diseases, developmental disabilities) Information and records maintained pursuant to former Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of the Health and Safety Code and pursuant to the Communicable Disease Prevention and Control Act (subdivision (a) of Section 27 of the Health and Safety Code).

(d) (Licensing and statistics) Information and records maintained pursuant to Division 2 (commencing with Section 1200) and Part 1 (commencing with Section 102100) of Division 102 of the Health and Safety Code; pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code; and pursuant to Section 8608, 8817, or 8909 of the Family Code.

(e) (Medical survey, workers' safety) Information and records acquired and maintained or disclosed pursuant to Sections 1380 and 1382 of the Health and Safety Code and pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

(f) (Industrial accidents) Information and records acquired, maintained, or disclosed pursuant to Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), and Division 4.7 (commencing with Section 6200) of the Labor Code.

(g) (Law enforcement) Information and records maintained by a health facility which are sought by a law enforcement agency under Chapter 3.5 (commencing with Section 1543) of Title 12 of Part 2 of the Penal Code.

(h) (Investigations of employment accident or illness) Information and records sought as part of an investigation of an on-the-job accident or illness pursuant to Division 5 (commencing with Section 6300) of the Labor Code or pursuant to Section 105200 of the Health and Safety Code.

(i) (Alcohol or drug abuse) Information and records subject to the federal alcohol and drug abuse regulations (Part 2 (commencing with Section 2.1) of subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations) or to Section 11977 of the Health and Safety Code dealing with narcotic and drug abuse.

(j) (Patient discharge data) Nothing in this part shall be construed to limit, expand, or otherwise affect the authority of the California Health Facilities Commission to collect patient discharge information from health facilities.

(k) Medical information and records disclosed to, and their use by, the Insurance Commissioner, the Director of the Department of Managed

Health Care, the Division of Industrial Accidents, the Workers' Compensation Appeals Board, the Department of Insurance, or the Department of Managed Health Care.

SEC. 4. Section 56.101 of the Civil Code is amended to read:

56.101. Every provider of health care, health care service plan, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records shall do so in a manner that preserves the confidentiality of the information contained therein. Any provider of health care, health care service plan, or contractor who negligently creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records shall be subject to the remedies and penalties provided under subdivisions (b) and (c) of Section 56.36.

SEC. 5. Section 1347.15 of the Health and Safety Code is amended to read:

1347.15. (a) There is hereby established in the Department of Managed Health Care the Financial Solvency Standards Board composed of eight members. The members shall consist of the director, or the director's designee, and seven members appointed by the director. The seven members appointed by the director may be, but are not necessarily limited to, individuals with training and experience in the following subject areas or fields: medical and health care economics; accountancy, with experience in integrated or affiliated health care delivery systems; excess loss insurance underwriting in the medical, hospital, and health plan business; actuarial studies in the area of health care delivery systems; management and administration in integrated or affiliated health care delivery systems; investment banking; and information technology in integrated or affiliated health care delivery systems. The members appointed by the director shall be appointed for a term of three years, but may be removed or reappointed by the director before the expiration of the term.

(b) The purpose of the board is to do all of the following:

(1) Advise the director on matters of financial solvency affecting the delivery of health care services.

(2) Develop and recommend to the director financial solvency requirements and standards relating to plan operations, plan-affiliate operations and transactions, plan-provider contractual relationships, and provider-affiliate operations and transactions.

(3) Periodically monitor and report on the implementation and results of the financial solvency requirements and standards.

(c) Financial solvency requirements and standards recommended to the director by the board may, after a period of review and comment not to exceed 45 days and, notwithstanding Section 1347, be noticed for adoption as regulations as proposed or modified under the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). During the director's 45-day review and comment period, the director, in consultation with the board, may postpone the adoption of the requirements and standards pending further review and comment. Within five business days of receipt by the director of the recommendation of the board, the director shall send an information only copy of the recommendations to the members of the Advisory Committee on Managed Care. Nothing in this subdivision prohibits the director from adopting regulations, including emergency regulations, under the rulemaking provisions of the Administrative Procedure Act.

(d) Except as provided in subdivision (e), the board shall meet at least quarterly and at the call of the chair. In order to preserve the independence of the board, the director shall not serve as chair. The members of the board may establish their own rules and procedures. All members shall serve without compensation, but shall be reimbursed from department funds for expenses actually and necessarily incurred in the performance of their duties.

(e) During the two years from the date of the first meeting of the board, the board shall meet monthly in order to expeditiously fulfill its purpose under paragraphs (1) and (2) of subdivision (b).

(f) For purposes of this section, ''board'' means the Financial Solvency Standards Board.

SEC. 6. Section 1363.5 of the Health and Safety Code is amended to read:

1363.5. (a) A plan shall disclose or provide for the disclosure to the director and to network providers the process the plan, its contracting provider groups, or any entity with which the plan contracts for services that include utilization review or utilization management functions, uses to authorize, modify, or deny health care services under the benefits provided by the plan, including coverage for subacute care, transitional inpatient care, or care provided in skilled nursing facilities. A plan shall also disclose those processes to enrollees or persons designated by an enrollee, or to any other person or organization, upon request. The disclosure to the director shall include the policies, procedures, and the description of the process that are filed with the director pursuant to subdivision (b) of Section 1367.01.

(b) The criteria or guidelines used by plans, or any entities with which plans contract for services that include utilization review or utilization management functions, to determine whether to authorize, modify, or deny health care services shall:

(1) Be developed with involvement from actively practicing health care providers.

(2) Be consistent with sound clinical principles and processes.

(3) Be evaluated, and updated if necessary, at least annually.

(4) If used as the basis of a decision to modify, delay, or deny services in a specified case under review, be disclosed to the provider and the enrollee in that specified case.

(5) Be available to the public upon request. A plan shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. A plan may charge reasonable fees to cover administrative expenses related to disclosing criteria or guidelines pursuant to this paragraph, limited to copying and postage costs. The plan may also make the criteria or guidelines available through electronic communication means.

(c) The disclosure required by paragraph (5) of subdivision (b) shall be accompanied by the following notice: ''The materials provided to you are guidelines used by this plan to authorize, modify, or deny care for persons with similar illnesses or conditions. Specific care and treatment may vary depending on individual need and the benefits covered under your contract.''

SEC. 7. Section 1364.5 of the Health and Safety Code is amended to read:

1364.5. (a) On or before July 1, 2001, every health care service plan shall file with the director a copy of their policies and procedures to protect the security of patient medical information to ensure compliance with the Confidentiality of Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code). Any amendment to the policies and procedures shall be filed in accordance with Section 1352.

(b) On and after July 1, 2001, every health care service plan shall, upon request, provide to enrollees and subscribers a written statement that describes how the contracting organization or health care service plan maintains the confidentiality of medical information obtained by and in the possession of the contracting organization or the health care service plan.

(c) The statement required by subdivision (b) shall be in at least 12-point type and meet the following requirements:

(1) The statement shall describe how the contracting organization or health care service plan protects the confidentiality of medical information pursuant to this article and inform patients or enrollees and subscribers that any disclosure of medical information beyond the provisions of the law is prohibited.

(2) The statement shall describe the types of medical information that may be collected and the type of sources that may be used to collect the information, the purposes for which the contracting organization or plan will obtain medical information from other health care providers.

(3) The statement shall describe the circumstances under which medical information may be disclosed without prior authorization, pursuant to Section 56.10 of the Civil Code.

(4) The statement shall describe how patients or enrollees and subscribers may obtain access to medical information created by and in the possession of the contracting organization or health care service plan, including copies of medical information.

(d) On and after July 1, 2001, every health care service plan shall include in its evidence of coverage or disclosure form the following notice, in 12-point type:

A STATEMENT DESCRIBING (NAME OR PLAN OR ''OUR'') POLICIES AND PROCEDURES FOR PRESERVING THE CONFIDENTIALITY OF MEDICAL RECORDS IS AVAILABLE AND WILL BE FURNISHED TO YOU UPON REQUEST.

SEC. 8. Section 1367.01 of the Health and Safety Code is amended to read:

1367.01. (a) Every health care service plan and any entity with which it contracts for services that include utilization review or utilization management functions, that prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, or that delegates these functions to medical groups or independent practice associations or to other contracting providers, shall comply with this section.

(b) A health care service plan that is subject to this section shall have written policies and procedures establishing the process by which the plan prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers of health care services for plan enrollees. These policies and procedures shall ensure that decisions based on the medical necessity of proposed health care services are consistent with criteria or guidelines that are supported by clinical principles and processes. These criteria and guidelines shall be developed pursuant to Section 1363.5. These policies and procedures, and a description of the process by which the plan reviews and approves, modifies, delays, or denies requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, shall be filed with the director for review and approval, and shall be disclosed by the plan to providers and enrollees upon request, and by the plan to the public upon request.

(c) Every health care service plan subject to this section shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code or pursuant to the Osteopathic Act, or, if the plan is a specialized health care service plan, a clinical director with California licensure in a clinical area appropriate to the type of care provided by the specialized health care service plan. The medical director or clinical director shall ensure that the process by which the plan reviews and approves, modifies, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, complies with the requirements of this section.

(d) If health plan personnel, or individuals under contract to the plan to review requests by providers, approve the provider's request, pursuant to subdivision (b), the decision shall be communicated to the provider pursuant to subdivision (h).

(e) No individual, other than a licensed physician or a licensed health care professional who is competent to evaluate the specific clinical issues involved in the health care services requested by the provider, may deny or modify requests for authorization of health care services for an enrollee for reasons of medical necessity. The decision of the physician or other health care professional shall be communicated to the provider and the enrollee pursuant to subdivision (h).

(f) The criteria or guidelines used by the health care service plan to determine whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall be consistent with clinical principles and processes. These criteria and guidelines shall be developed pursuant to the requirements of Section 1363.5.

(g) If the health care service plan requests medical information from providers in order to determine whether to approve, modify, or deny requests for authorization, the plan shall request only the information reasonably necessary to make the determination.

(h) In determining whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, based in whole or in part on medical necessity, every health care service plan subject to this section shall meet the following requirements:

(1) Decisions to approve, modify, or deny, based on medical necessity, requests by providers prior to, or concurrent with the provision of health care services to enrollees that do not meet the requirements for the 72-hour review required by paragraph (2), shall be made in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed five business days from the plan's receipt of the

information reasonably necessary and requested by the plan to make the determination. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of the receipt of information that is reasonably necessary to make this determination, and shall be communicated to the provider in a manner that is consistent with current law. For purposes of this section, retrospective reviews shall be for care rendered on or after January 1, 2000.

(2) 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 the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the enrollee's life or health or could jeopardize the enrollee's ability to regain maximum function, decisions to approve, modify, or deny requests by providers prior to, or concurrent with, the provision of health care services to enrollees, shall be made 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 information reasonably necessary and requested by the plan to make the determination. Nothing in this section shall be construed to alter the requirements of subdivision (b) of Section 1371.4. Notwithstanding Section 1371.4, the requirements of this division shall be applicable to all health plans and other entities conducting utilization review or utilization management.

(3) Decisions to approve, modify, or deny requests by providers for authorization prior to, or concurrent with, the provision of health care services to enrollees shall be communicated to the requesting provider within 24 hours of the decision. Except for concurrent review decisions pertaining to care that is underway, which shall be communicated to the enrollee's treating provider within 24 hours, decisions resulting in denial, delay, or modification of all or part of the requested health care service shall be communicated to the enrollee in writing within two business days of the decision. In the case of concurrent review, care shall not be discontinued until the enrollee's treating provider has been notified of the plan's decision, and a care plan has been agreed upon by the treating provider that is appropriate for the medical needs of that patient.

(4) Communications regarding decisions to approve requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall specify the specific health care service approved. Responses regarding decisions to deny, delay, or modify health care services requested by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall be communicated to the enrollee in writing, and to

providers initially by telephone or facsimile, except with regard to decisions rendered retrospectively, and then in writing, and shall include a clear and concise explanation of the reasons for the plan's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity. Any written communication to a physician or other health care provider of a denial, delay, or modification of a request shall include the name and telephone number of the health care professional responsible for the denial, delay, or modification. The telephone number provided shall be a direct number or an extension, to allow the physician or health care provider easily to contact the professional responsible for the denial, delay, or modification. Responses shall also include information as to how the enrollee may file a grievance with the plan pursuant to Section 1368, and in the case of Medi-Cal enrollees, shall explain how to request an administrative hearing and aid paid pending under Sections 51014.1 and 51014.2 of Title 22 of the California Code of Regulations.

(5) If the health care service plan cannot make a decision to approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2) because the plan is not in receipt of all of the information reasonably necessary and requested, or because the plan requires consultation by an expert reviewer, or because the plan has asked that an additional examination or test be performed upon the enrollee, provided the examination or test is reasonable and consistent with good medical practice, the plan shall, immediately upon the expiration of the timeframe specified in paragraph (1) or (2) or as soon as the plan becomes aware that it will not meet the timeframe, whichever occurs first, notify the provider and the enrollee, in writing, that the plan cannot make a decision to approve, modify, or deny the request for authorization within the required timeframe, and specify the information requested but not received, or the expert reviewer to be consulted, or the additional examinations or tests required. The plan shall also notify the provider and enrollee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the plan, the plan shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2), whichever applies.

(6) If the director determines that a health care service plan has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected, in accordance with subdivision (a) of Section 1397. The

administrative penalties shall not be deemed an exclusive remedy for the director. These penalties shall be paid to the State Managed Care Fund.

(i) Every health care service plan subject to this section shall maintain telephone access for providers to request authorization for health care services.

(j) Every health care service plan subject to this section that reviews requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall establish, as part of the quality assurance program required by Section 1370, a process by which the plan's compliance with this section is assessed and evaluated. The process shall include provisions for evaluation of complaints, assessment of trends, implementation of actions to correct identified problems, mechanisms to communicate actions and results to the appropriate health plan employees and contracting providers, and provisions for evaluation of any corrective action plan and measurements of performance.

(k) The director shall review a health care service plan's compliance with this section as part of its periodic onsite medical survey of each plan undertaken pursuant to Section 1380, and shall include a discussion of compliance with this section as part of its report issued pursuant to that section.

(*l*) This section shall not apply to decisions made for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of religion as set forth in subdivision (a) of Section 1270.

(m) Nothing in this section shall cause a health care service plan to be defined as a health care provider for purposes of any provision of law, including, but not limited to, Section 6146 of the Business and Professions Code, Sections 3333.1 and 3333.2 of the Civil Code, and Sections 340.5, 364, 425.13, 667.7, and 1295 of the Code of Civil Procedure.

SEC. 9. Section 1367.5 of the Health and Safety Code is repealed.

SEC. 10. Section 1367.51 of the Health and Safety Code is amended to read:

1367.51. (a) Every health care service plan contract, except a specialized health care service plan contract, that is issued, amended, delivered, or renewed on or after January 1, 2000, and that covers hospital, medical, or surgical expenses shall include coverage for the following equipment and supplies for the management and treatment of insulin-using diabetes, non-insulin-using diabetes, and gestational diabetes as medically necessary, even if the items are available without a prescription:

(1) Blood glucose monitors and blood glucose testing strips.

(2) Blood glucose monitors designed to assist the visually impaired.

(3) Insulin pumps and all related necessary supplies.
(4) Ketone urine testing strips.
(5) Lancets and lancet puncture devices.
(6) Pen delivery systems for the administration of insulin.
(7) Podiatric devices to prevent or treat diabetes-related complications.
(8) Insulin syringes.
(9) Visual aids, excluding eyewear, to assist the visually impaired with proper dosing of insulin.

(b) Every health care service plan contract, except a specialized health care service plan contract, that is issued, amended, delivered, or renewed on or after January 1, 2000, that covers prescription benefits shall include coverage for the following prescription items if the items are determined to be medically necessary:
(1) Insulin.
(2) Prescriptive medications for the treatment of diabetes.
(3) Glucagon.

(c) The copayments and deductibles for the benefits specified in subdivisions (a) and (b) shall not exceed those established for similar benefits within the given plan.

(d) Every plan shall provide coverage for diabetes outpatient self-management training, education, and medical nutrition therapy necessary to enable an enrollee to properly use the equipment, supplies, and medications set forth in subdivisions (a) and (b), and additional diabetes outpatient self-management training, education, and medical nutrition therapy upon the direction or prescription of those services by the enrollee's participating physician. If a plan delegates outpatient self-management training to contracting providers, the plan shall require contracting providers to ensure that diabetes outpatient self-management training, education, and medical nutrition therapy are provided by appropriately licensed or registered health care professionals.

(e) The diabetes outpatient self-management training, education, and medical nutrition therapy services identified in subdivision (d) shall be provided by appropriately licensed or registered health care professionals as prescribed by a participating health care professional legally authorized to prescribe the service. These benefits shall include, but not be limited to, instruction that will enable diabetic patients and their families to gain an understanding of the diabetic disease process, and the daily management of diabetic therapy, in order to thereby avoid frequent hospitalizations and complications.

(f) The copayments for the benefits specified in subdivision (d) shall not exceed those established for physician office visits by the plan.

(g) Every health care service plan governed by this section shall disclose the benefits covered pursuant to this section in the plan's evidence of coverage and disclosure forms.

(h) A health care service plan may not reduce or eliminate coverage as a result of the requirements of this section.

SEC. 11. Section 1368 of the Health and Safety Code is amended to read:

1368. (a) Every plan shall do all of the following:

(1) Establish and maintain a grievance system approved by the department under which enrollees may submit their grievances to the plan. Each system shall provide reasonable procedures in accordance with department regulations that shall ensure adequate consideration of enrollee grievances and rectification when appropriate.

(2) Inform its subscribers and enrollees upon enrollment in the plan and annually thereafter of the procedure for processing and resolving grievances. The information shall include the location and telephone number where grievances may be submitted.

(3) Provide forms for grievances to be given to subscribers and enrollees who wish to register written grievances. The forms used by plans licensed pursuant to Section 1353 shall be approved by the director in advance as to format.

(4) Provide subscribers and enrollees with written responses to grievances, with a clear and concise explanation of the reasons for the plan's response. For grievances involving the delay, denial, or modification of health care services, the plan response shall describe the criteria used and the clinical reasons for its decision, including all criteria and clinical reasons related to medical necessity. If a plan, or one of its contracting providers, issues a decision delaying, denying, or modifying 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 decision shall clearly specify the provisions in the contract that exclude that coverage.

(5) Keep in its files all copies of grievances, and the responses thereto, for a period of five years.

(b) (1) (A) After either completing the grievance process described in subdivision (a), or participating in the process for at least 30 days, a subscriber or enrollee may submit the grievance to the department for review. In any case determined by the department to be a case involving an imminent and serious threat to the health of the patient, including, but not limited to, severe pain, the potential loss of life, limb, or major bodily function, or in any other case where the department determines that an earlier review is warranted, a subscriber or enrollee shall not be required to complete the grievance process or participate in the process for at least 30 days before submitting a grievance to the department for review.

(B) A grievance may be submitted to the department for review and resolution prior to any arbitration.

(C) Notwithstanding subparagraphs (A) and (B), the department may refer any grievance that does not pertain to compliance with this chapter to the State Department of Health Services, the California Department of Aging, the federal Health Care Financing Administration, or any other appropriate governmental entity for investigation and resolution.

(2) If the subscriber or enrollee is a minor, or is incompetent or incapacitated, the parent, guardian, conservator, relative, or other designee of the subscriber or enrollee, as appropriate, may submit the grievance to the department as the agent of the subscriber or enrollee. Further, a provider may join with, or otherwise assist, a subscriber or enrollee, or the agent, to submit the grievance to the department. In addition, following submission of the grievance to the department, the subscriber or enrollee, or the agent, may authorize the provider to assist, including advocating on behalf of the subscriber or enrollee. For purposes of this section, a ''relative'' includes the parent, stepparent, spouse, adult son or daughter, grandparent, brother, sister, uncle, or aunt of the subscriber or enrollee.

(3) The department shall review the written documents submitted with the subscriber's or the enrollee's request for review, or submitted by the agent on behalf of the subscriber or enrollee. The department may ask for additional information, and may hold an informal meeting with the involved parties, including providers who have joined in submitting the grievance or who are otherwise assisting or advocating on behalf of the subscriber or enrollee. If after reviewing the record, the department concludes that the grievance, in whole or in part, is eligible for review under the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30), the department shall immediately notify the subscriber or enrollee, or agent, of that option and shall, if requested orally or in writing, assist the subscriber or enrollee in participating in the independent medical review system.

(4) If after reviewing the record of a grievance, the department concludes that a health care service eligible for coverage and payment under a health care service plan contract has been delayed, denied, or modified by a plan, or by one of its contracting providers, in whole or in part due to a determination that the service is not medically necessary, and that determination was not communicated to the enrollee in writing along with a notice of the enrollee's potential right to participate in the independent medical review system, as required by this chapter, the director shall, by order, assess administrative penalties. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice of, and the opportunity for, a hearing with regard to the person affected in accordance with Section 1397. The

administrative penalties shall not be deemed an exclusive remedy available to the director. These penalties shall be paid to the State Managed Care Fund.

(5) The department shall send a written notice of the final disposition of the grievance, and the reasons therefor, to the subscriber or enrollee, the agent, to any provider that has joined with or is otherwise assisting the subscriber or enrollee, and to the plan, within 30 calendar days of receipt of the request for review unless the director, in his or her discretion, determines that additional time is reasonably necessary to fully and fairly evaluate the relevant grievance. In any case not eligible for the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30), the department's written notice shall include, at a minimum, the following:

(A) A summary of its findings and the reasons why the department found the plan to be, or not to be, in compliance with any applicable laws, regulations, or orders of the director.

(B) A discussion of the department's contact with any medical provider, or any other independent expert relied on by the department, along with a summary of the views and qualifications of that provider or expert.

(C) If the enrollee's grievance is sustained in whole or part, information about any corrective action taken.

(6) In any department review of a grievance involving a disputed health care service, as defined in subdivision (b) of Section 1374.30, that is not eligible for the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30), in which the department finds that the plan has delayed, denied, or modified health care services that are medically necessary, based on the specific medical circumstances of the enrollee, and those services are a covered benefit under the terms and conditions of the health care service plan contract, the department's written notice shall either: (A) order the plan to promptly offer and provide those health care services to the enrollee, or (B) order the plan to promptly reimburse the enrollee for any reasonable costs associated with urgent care or emergency services, or other extraordinary and compelling health care services, when the department finds that the enrollee's decision to secure those services outside of the plan network was reasonable under the circumstances. The department's order shall be binding on the plan.

(7) Distribution of the written notice shall not be deemed a waiver of any exemption or privilege under existing law, including, but not limited to, Section 6254.5 of the Government Code, for any information in connection with and including the written notice, nor shall any person employed or in any way retained by the department be required to testify as to that information or notice.

(8) The director shall establish and maintain a system of aging of grievances that are pending and unresolved for 30 days or more, that shall include a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more.

(9) A subscriber or enrollee, or the agent acting on behalf of a subscriber or enrollee, may also request voluntary mediation with the plan prior to exercising the right to submit a grievance to the department. The use of mediation services shall not preclude the right to submit a grievance to the department upon completion of mediation. In order to initiate mediation, the subscriber or enrollee, or the agent acting on behalf of the subscriber or enrollee, and the plan shall voluntarily agree to mediation. Expenses for mediation shall be borne equally by both sides. The department shall have no administrative or enforcement responsibilities in connection with the voluntary mediation process authorized by this paragraph.

(c) The plan's grievance system shall include a system of aging of grievances that are pending and unresolved for 30 days or more. The plan shall provide a quarterly report to the director of grievances pending and unresolved for 30 or more days with separate categories of grievances for Medicare enrollees and Medi-Cal enrollees. The plan shall include with the report a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more. The plan may include the following statement in the quarterly report that is made available to the public by the director:

> ''Under Medicare and Medi-Cal law, Medicare enrollees and Medi-Cal enrollees each have separate avenues of appeal that are not available to other enrollees. Therefore, grievances pending and unresolved may reflect enrollees pursuing their Medicare or Medi-Cal appeal rights.''

If requested by a plan, the director shall include this statement in a written report made available to the public and prepared by the director that describes or compares grievances that are pending and unresolved with the plan for 30 days or more. Additionally, the director shall, if requested by a plan, append to that written report a brief explanation, provided in writing by the plan, of the reasons why grievances described in that written report are pending and unresolved for 30 days or more. The director shall not be required to include a statement or append a brief explanation to a written report that the director is required to prepare under this chapter, including Sections 1380 and 1397.5.

(d) Subject to subparagraph (C) of paragraph (1) of subdivision (b), the grievance or resolution procedures authorized by this section shall be in addition to any other procedures that may be available to any

person, and failure to pursue, exhaust, or engage in the procedures described in this section shall not preclude the use of any other remedy provided by law.

(e) Nothing in this section shall be construed to allow the submission to the department of any provider grievance under this section. However, as part of a provider's duty to advocate for medically appropriate health care for his or her patients pursuant to Sections 510 and 2056 of the Business and Professions Code, nothing in this subdivision shall be construed to prohibit a provider from contacting and informing the department about any concerns he or she has regarding compliance with or enforcement of this chapter.

SEC. 12. Section 1368.04 of the Health and Safety Code is amended to read:

1368.04. (a) The director shall investigate and take enforcement action against plans regarding grievances reviewed and found by the department to involve noncompliance with the requirements of this chapter, including grievances that have been reviewed pursuant to the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30). Where substantial harm to an enrollee has occurred as a result of plan noncompliance, the director shall, by order, assess administrative penalties subject to appropriate notice of, and the opportunity for, a hearing with regard to the person affected in accordance with Section 1397. The administrative penalties shall not be deemed an exclusive remedy available to the director. These penalties shall be paid to the State Managed Care Fund. The director shall periodically evaluate grievances to determine if any audit, investigative, or enforcement actions should be undertaken by the department.

(b) The director may, after appropriate notice and opportunity for hearing in accordance with Section 1397, by order, assess administrative penalties if the director determines that a health care service plan has knowingly committed, or has performed with a frequency that indicates a general business practice, either of the following:

(1) Repeated failure to act promptly and reasonably to investigate and resolve grievances in accordance with Section 1368.01.

(2) Repeated failure to act promptly and reasonably to resolve grievances when the obligation of the plan to the enrollee or subscriber is reasonably clear.

(c) 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 warranted by the director to enforce this chapter.

(d) The administrative penalties authorized pursuant to this section shall be paid to the State Managed Care Fund.

SEC. 13. Section 1370.4 of the Health and Safety Code is amended to read:

1370.4. (a) Every health care service plan shall provide an external, independent review process to examine the plan's coverage decisions regarding experimental or investigational therapies for individual enrollees who meet all of the following criteria:

(1) (A) The enrollee has a life-threatening or seriously debilitating condition.

(B) For purposes of this section, ''life-threatening'' means either or both of the following:

(i) Diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted.

(ii) Diseases or conditions with potentially fatal outcomes, where the end point of clinical intervention is survival.

(C) For purposes of this section, ''seriously debilitating'' means diseases or conditions that cause major irreversible morbidity.

(2) The enrollee's physician certifies that the enrollee has a condition, as defined in paragraph (1), for which standard therapies have not been effective in improving the condition of the enrollee, for which standard therapies would not be medically appropriate for the enrollee, or for which there is no more beneficial standard therapy covered by the plan than the therapy proposed pursuant to paragraph (3).

(3) Either (A) the enrollee's physician, who is under contract with or employed by the plan, has recommended a drug, device, procedure or other therapy that the physician certifies in writing is likely to be more beneficial to the enrollee than any available standard therapies, or (B) the enrollee, or the enrollee's physician who is a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the enrollee's condition, has requested a therapy that, based on two documents from the medical and scientific evidence, as defined in subdivision (d), is likely to be more beneficial for the enrollee than any available standard therapy. The physician certification pursuant to this subdivision shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation. Nothing in this subdivision shall be construed to require the plan to pay for the services of a nonparticipating physician provided pursuant to this subdivision, that are not otherwise covered pursuant to the plan contact.

(4) The enrollee has been denied coverage by the plan for a drug, device, procedure, or other therapy recommended or requested pursuant to paragraph (3).

(5) The specific drug, device, procedure, or other therapy recommended pursuant to paragraph (3) would be a covered service, except for the plan's determination that the therapy is experimental or investigational.

(b) The plan's decision to delay, deny, or modify experimental or investigational therapies shall be subject to the independent medical review process under Article 5.55 (commencing with Section 1374.30) except that, in lieu of the information specified in subdivision (b) of Section 1374.33, an independent medical reviewer shall base his or her determination on relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence defined in subdivision (d).

(c) The independent medical review process shall also meet the following criteria:

(1) The plan shall notify eligible enrollees in writing of the opportunity to request the external independent review within five business days of the decision to deny coverage.

(2) If the enrollee's physician determines that the proposed therapy would be significantly less effective if not promptly initiated, the analyses and recommendations of the experts on the panel shall be rendered within seven days of the request for expedited review. At the request of the expert, the deadline shall be extended by up to three days for a delay in providing the documents required. The timeframes specified in this paragraph shall be in addition to any otherwise applicable timeframes contained in subdivision (c) of Section 1374.33.

(3) Each expert's analysis and recommendation shall be in written form and state the reasons the requested therapy is or is not likely to be more beneficial for the enrollee than any available standard therapy, and the reasons that the expert recommends that the therapy should or should not be provided by the plan, citing the enrollee's specific medical condition, the relevant documents provided, and the relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence as defined in subdivision (d), to support the expert's recommendation.

(4) Coverage for the services required under this section shall be provided subject to the terms and conditions generally applicable to other benefits under the plan contract.

(d) For the purposes of subdivision (b), ''medical and scientific evidence'' means the following sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus,

Excerpta Medicus (EMBASE), Medline, and MEDLARS data base Health Services Technology Assessment Research (HSTAR).

(3) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act.

(4) The following standard reference compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information.

(5) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

(e) The independent review process established by this section shall be required on and after January 1, 2001.

SEC. 14. Section 1375.4 of the Health and Safety Code is amended to read:

1375.4. (a) Every contract between a health care service plan and a risk-bearing organization that is issued, amended, renewed, or delivered in this state on or after July 1, 2000, shall include provisions concerning the following, as to the risk-bearing organization's administrative and financial capacity, which shall be effective as of January 1, 2001:

(1) A requirement that the risk-bearing organization furnish financial information to the health care service plan or the plan's designated agent and meet any other financial requirements that assist the health care service plan in maintaining the financial viability of its arrangements for the provision of health care services in a manner that does not adversely affect the integrity of the contract negotiation process.

(2) A requirement that the health care service plan disclose information to the risk-bearing organization that enables the risk-bearing organization to be informed regarding the financial risk assumed under the contract.

(3) A requirement that the health care service plans provide payments of all risk arrangements, excluding capitation, within 180 days after close of the fiscal year.

(b) In accordance with subdivision (a) of Section 1344, the director shall adopt regulations on or before June 30, 2000, to implement this section which shall, at a minimum, provide for the following:

(1) (A) A process for reviewing or grading risk-bearing organizations based on the following criteria:

(i) The risk-bearing organization meets criterion 1 if it reimburses, contests, or denies claims for health care services it has provided, arranged, or for which it is otherwise financially responsible in accordance with the timeframes and other requirements described in Section 1371 and in accordance with any other applicable state and federal laws and regulations.

(ii) The risk-bearing organization meets criterion 2 if it estimates its liability for incurred but not reported claims pursuant to a method that has not been held objectionable by the director, records the estimate at least quarterly as an accrual in its books and records, and appropriately reflects this accrual in its financial statements.

(iii) The risk-bearing organization meets criterion 3 if it maintains at all times a positive tangible net equity, as defined in subdivision (e) of Section 1300.76 of Title 10 of the California Code of Regulations.

(iv) The risk-bearing organization meets criterion 4 if it maintains at all times a positive level of working capital (excess of current assets over current liabilities).

(B) A risk-bearing organization may reduce its liabilities for purposes of calculating tangible net equity, pursuant to clause (iii) of subparagraph (A), and working capital, pursuant to clause (iv) of subparagraph (A), by the amount of any liabilities the payment of which is guaranteed by a sponsoring organization pursuant to a qualified guarantee. A sponsoring organization is one that has a tangible net equity of a level to be established by the director that is in excess of all amounts that it has guaranteed to any person or entity. A qualified guarantee is one that meets all of the following:

(i) It is approved by a board resolution of the sponsoring organization.

(ii) The sponsoring organization agrees to submit audited annual financial statements to the plan within 120 days of the end of the sponsoring organization's fiscal year.

(iii) The guarantee is unconditional except for a maximum monetary limit.

(iv) The guarantee is not limited in duration with respect to liabilities arising during the term of the guarantee.

(v) The guarantee provides for six months' advance notice to the plan prior to its cancellation.

(2) The information required from risk-bearing organizations to assist in reviewing or grading these risk-bearing organizations, including balance sheets, claims reports, and designated annual,

quarterly, or monthly financial statements prepared in accordance with generally accepted accounting principles, to be used in a manner, and to the extent necessary, provided to a single external party as approved by the director to the extent that it does not adversely affect the integrity of the contract negotiation process between the health care service plan and the risk-bearing organizations.

(3) Audits to be conducted in accordance with generally accepted auditing standards and in a manner that avoids duplication of review of the risk-bearing organization.

(4) A process for corrective action plans, as mutually agreed upon by the health care service plan and the risk-bearing organization and as approved by the director, for cases where the review or grading indicates deficiencies that need to be corrected by the risk-bearing organization, and contingency plans to ensure the delivery of health care services if the corrective action fails. The corrective action plan shall be approved by the director and standardized, to the extent possible, to meet the needs of the director and all health care service plans contracting with the risk-bearing organization. If the health care service plan and the risk-bearing organization are unable to determine a mutually agreeable corrective action plan, the director shall determine the corrective action plan.

(5) The disclosure of information by health care service plans to the risk-bearing organization that enables the risk-bearing organization to be informed regarding the risk assumed under the contract, including:

(A) Enrollee information monthly.

(B) Risk arrangement information, information pertaining to any pharmacy risk assumed under the contract, information regarding incentive payments, and information on income and expenses assigned to the risk-bearing organization quarterly.

(6) Periodic reports from each health care service plan to the director that include information concerning the risk-bearing organizations and the type and amount of financial risk assumed by them, and, if deemed necessary and appropriate by the director, a registration process for the risk-bearing organizations.

(7) The confidentiality of financial and other records to be produced, disclosed, or otherwise made available, unless as otherwise determined by the director.

(c) The failure by a health care service plan to comply with the contractual requirements pursuant to this section shall constitute grounds for disciplinary action. The director shall, as appropriate, within 60 days after receipt of documented violation from a risk-bearing organization, investigate and take enforcement action against a health care service plan that fails to comply with these requirements and shall periodically evaluate contracts between health care service plans and

risk-bearing organizations to determine if any audit, evaluation, or enforcement actions should be undertaken by the department.

(d) The Financial Solvency Standards Board established in Section 1347.15 shall study and report to the director on or before January 1, 2001, regarding all of the following:

(1) The feasibility of requiring that there be in force insurance coverage commensurate with the financial risk assumed by the risk-bearing organization to protect against financial losses.

(2) The appropriateness of different risk-bearing arrangements between health care service plans and risk-bearing organizations.

(3) The appropriateness of the four criteria specified in paragraph (1) of subdivision (b).

(e) This section shall not apply to specialized health care service plans.

(f) For purposes of this section, ''provider organization'' means a medical group, independent practice association, or other entity that delivers, furnishes, or otherwise arranges for or provides health care services, but does not include an individual or a plan.

(g) (1) For the purposes of this section, a ''risk-bearing organization'' means a professional medical corporation, other form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure pursuant to subdivision (*l*) of Section 1206, or another lawfully organized group of physicians that delivers, furnishes, or otherwise arranges for or provides health care services, but does not include an individual or a health care service plan, and that does all of the following:

(A) Contracts directly with a health care service plan or arranges for health care services for the health care service plan's enrollees.

(B) Receives compensation for those services on any capitated or fixed periodic payment basis.

(C) Is responsible for the processing and payment of claims made by providers for services rendered by those providers on behalf of a health care service plan that are covered under the capitation or fixed periodic payment made by the plan to the risk-bearing organization. Nothing in this subparagraph in any way limits, alters, or abrogates any responsibility of a health care service plan under existing law.

(2) Notwithstanding paragraph (1), risk-bearing organizations shall not be deemed to include a provider organization that meets either of the following requirements:

(A) The health care service plan files with the department consolidated financial statements that include the provider organization.

(B) The health care service plan is the only health care service plan with which the provider organization contracts for arranging or providing health care services and, during the previous and current fiscal

years, the provider organization's maximum potential expenses for providing or arranging for health care services did not exceed 115 percent of its maximum potential revenue for providing or arranging for those services.

(h) For purposes of this section, ''claims'' include, but are not limited to, contractual obligations to pay capitation or payments on a managed hospital payment basis.

SEC. 15. Section 1386 of the Health and Safety Code is amended to read:

1386. (a) The director may, after appropriate notice and opportunity for a hearing, by order suspend or revoke any license issued under this chapter to a health care service plan or assess administrative penalties if the director determines that the licensee has committed any of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the director:

(1) The plan is operating at variance with the basic organizational documents as filed pursuant to Section 1351 or 1352, or with its published plan, or in any manner contrary to that described in, and reasonably inferred from, the plan as contained in its application for licensure and annual report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the director.

(2) The plan has issued, or permits others to use, evidence of coverage or uses a schedule of charges for health care services which do not comply with those published in the latest evidence of coverage found unobjectionable by the director.

(3) The plan does not provide basic health care services to its enrollees and subscribers as set forth in the evidence of coverage. This subdivision shall not apply to specialized health care service plan contracts.

(4) The plan is no longer able to meet the standards set forth in Article 5 (commencing with Section 1367).

(5) The continued operation of the plan will constitute a substantial risk to its subscribers and enrollees.

(6) The plan has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter, any rule or regulation adopted by the director pursuant to this chapter, or any order issued by the director pursuant to this chapter.

(7) The plan has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(8) The plan has permitted, or aided or abetted any violation by an employee or contractor who is a holder of any certificate, license, permit, registration or exemption issued pursuant to the Business and Professions Code, or this code which would constitute grounds for discipline against the certificate, license, permit, registration, or exemption.

(9) The plan has aided or abetted or permitted the commission of any illegal act.

(10) The engagement of a person as an officer, director, employee, associate, or provider of the plan contrary to the provisions of an order issued by the director pursuant to subdivision (c) of this section or subdivision (d) of Section 1388.

(11) The engagement of a person as a solicitor or supervisor of solicitation contrary to the provisions of an order issued by the director pursuant to Section 1388.

(12) The plan, its management company, or any other affiliate of the plan, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the plan, management company or affiliate, has been convicted of or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this chapter. The director may revoke or deny a license hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(13) The plan violates Section 510, 2056, or 2056.1 of the Business and Professions Code.

(14) The plan has been subject to a final disciplinary action taken by this state, another state, an agency of the federal government, or another country, for any act or omission that would constitute a violation of this chapter.

(15) The plan violates the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(c) (1) The director may prohibit any person from serving as an officer, director, employee, associate, or provider of any plan or solicitor firm, or of any management company of any plan, or as a solicitor, if either of the following applies:

(A) The prohibition is in the public interest and the person has committed, caused, participated in, or had knowledge of a violation of this chapter by a plan, management company, or solicitor firm.

(B) The person was an officer, director, employee, associate, or provider of a plan or of a management company or solicitor firm of any plan whose license has been suspended or revoked pursuant to this

section and the person had knowledge of, or participated in, any of the prohibited acts for which the license was suspended or revoked.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a plan under this section or may constitute a separate proceeding, subject in either case to subdivision (d).

(d) A proceeding under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard to, the person affected in accordance with subdivision (a) of Section 1397.

SEC. 16. Section 1395.6 of the Health and Safety Code is amended to read:

1395.6. (a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the Legislature that every arrangement that results in any payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed to the provider in advance and shall actively encourage patients to use the network, unless the health care provider agrees to provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose to the provider whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage a payor's subscribers to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged its subscribers to use the list of contracted providers if one of the following occurs:

(A) The payor offers its subscribers direct financial incentives to use the list of contracted providers when obtaining medical care. ''Financial incentives'' means reduced copayments, reduced deductibles, premium discounts directly attributable to the use of a provider panel, or financial penalties directly attributable to the nonuse of a provider panel.

(B) The payor provides information to subscribers advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to subscribers in advance of their selection of a health care provider, which approaches

may include, but are not limited to, the use of provider directories, or the use of toll-free telephone numbers or Internet web site addresses supplied directly to every subscriber. However, Internet web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a subscriber.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the payors' subscribers to use the list of contracted providers when obtaining medical care.

(4) Disclose, upon the initial signing of a contract, and within 30 calendar days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreement with any contracting agent.

Nothing in this subdivision shall be construed to require a payor to actively encourage the payor's subscribers to use the list of contracted providers when obtaining medical care in the case of an emergency.

(c) A contracting agent shall allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' subscribers to use the list of contracted providers when obtaining medical care as described in paragraph (2) of subdivision (b). Each provider's election under this subdivision shall be binding on every contracting agent or payor that buys, leases, or otherwise obtains a list of contracted providers.

(d) A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the payors' subscribers to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' subscribers to use the list of contracted providers when obtaining medical care.

(e) A payor shall provide an explanation of benefits or explanation of review that identifies the name of the network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered.

(f) A payor shall demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The failure of a payor

to do so shall render the payor liable for the amount that the payor would have been required to pay pursuant to the applicable health care service plan contract covering the enrollee, which amount shall be due and payable within 10 days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this subdivision. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(1) Discloses the name of the network that has a written agreement with the provider whereby the provider agrees to accept discounted rates, and describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b).

(2) Identifies the provider's written agreement with a contracting agent whereby the provider agrees to be included on lists of contracted providers sold, leased, transferred, or conveyed to payors that do not actively encourage beneficiaries to use the list of contracted providers pursuant to subdivision (c).

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

(1) ''Contracting agent'' means a health care service plan or a specialized health care service plan, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, conveying, or arranging the availability of a provider or provider panel to provide health care services to subscribers.

(2) ''Payor'' means a health care service plan or a specialized health care service plan.

(3) ''Payor summary'' means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(4) ''Provider'' means any of the following:

(A) Any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200).

(E) Any entity exempt from licensure pursuant to Section 1206.

(h) This section shall become operative on July 1, 2000.

SEC. 17. Section 13933 of the Health and Safety Code is amended and renumbered to read:

1374.34. (a) Upon receiving the decision adopted by the director pursuant to Section 1374.33 that a disputed health care service is medically necessary, the plan shall promptly implement the decision. In the case of reimbursement for services already rendered, the plan shall reimburse the provider or enrollee, whichever applies, within five working days. In the case of services not yet rendered, the plan shall authorize the services within five working days of receipt of the written decision from the director, or sooner if appropriate for the nature of the enrollee's medical condition, and shall inform the enrollee and provider of the authorization in accordance with the requirements of paragraph (3) of subdivision (h) of Section 1367.01.

(b) A plan shall not engage in any conduct that has the effect of prolonging the independent review process. The engaging in that conduct or the failure of the plan to promptly implement the decision is a violation of this chapter and, in addition to any other fines, penalties, and other remedies available to the director under this chapter, the plan shall be subject to an administrative penalty of not less than five thousand dollars ($5,000) for each day that the decision is not implemented. Administrative penalties shall be deposited in the State Managed Care Fund.

(c) In any case where an enrollee secured urgent care or emergency services outside of the plan provider network, which services are later found by the independent medical review organization to have been medically necessary pursuant to Section 1374.33, the director shall require the plan to promptly reimburse the enrollee for any reasonable costs associated with those services when the director finds that the enrollee's decision to secure the services outside of the plan provider network prior to completing the plan grievance process or seeking an independent medical review was reasonable under the circumstances and the disputed health care services were a covered benefit under the terms and conditions of the health care service plan contract.

(d) In addition to requiring plan compliance regarding subdivisions (a), (b), and (c) the director shall review individual cases submitted for independent medical review to determine whether any enforcement actions, including penalties, may be appropriate. In particular, where substantial harm, as defined in Section 3428 of the Civil Code, to an enrollee has already occurred because of the decision of a plan, or one of its contracting providers, to delay, deny, or modify covered health care services that an independent medical review determines to be medically necessary pursuant to Section 1374.33, the director shall impose penalties.

(e) Pursuant to Section 1368.04, the director shall perform an annual audit of independent medical review cases for the dual purposes of education and the opportunity to determine if any investigative or enforcement actions should be undertaken by the department, particularly if a plan repeatedly fails to act promptly and reasonably to resolve grievances associated with a delay, denial, or modification of medically necessary health care services when the obligation of the plan to provide those health care services to enrollees or subscribers is reasonably clear.

SEC. 18. Section 10123.135 of the Insurance Code, as amended by Chapter 539 of the Statutes of 1999, is amended to read:

10123.135. (a) Every disability insurer, or an entity with which it contracts for services that include utilization review or utilization management functions, that covers hospital, medical, or surgical expenses and that prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to insureds, or that delegates these functions to medical groups or independent practice associations or to other contracting providers, shall comply with this section.

(b) A disability insurer that is subject to this section, or any entity with which an insurer contracts for services that include utilization review or utilization management functions, shall have written policies and procedures establishing the process by which the insurer prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers of health care services for insureds. These policies and procedures shall ensure that decisions based on the medical necessity of proposed health care services are consistent with criteria or guidelines that are supported by clinical principles and processes. These criteria and guidelines shall be developed pursuant to subdivision (f). These policies and procedures, and a description of the process by which an insurer, or an entity with which an insurer contracts for services that include utilization review or utilization management functions, reviews and approves, modifies, delays, or denies requests by providers prior to, retrospectively, or concurrent with the provision of health care services to insureds, shall be filed with the commissioner, and shall be disclosed by the insurer to insureds and providers upon request, and by the insurer to the public upon request.

(c) If the number of insureds covered under health benefit plans in this state that are issued by an insurer subject to this section constitute at least 50 percent of the number of insureds covered under health benefit plans issued nationwide by that insurer, the insurer shall employ or designate

a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code or the Osteopathic Act, or the insurer may employ a clinical director licensed in California whose scope of practice under California law includes the right to independently perform all those services covered by the insurer. The medical director or clinical director shall ensure that the process by which the insurer reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to insureds, complies with the requirements of this section. Nothing in this subdivision shall be construed as restricting the existing authority of the Medical Board of California.

(d) If an insurer subject to this section, or individuals under contract to the insurer to review requests by providers, approve the provider's request pursuant to subdivision (b), the decision shall be communicated to the provider pursuant to subdivision (h).

(e) No individual, other than a licensed physician or a licensed health care professional who is competent to evaluate the specific clinical issues involved in the health care services requested by the provider, may deny or modify requests for authorization of health care services for an insured for reasons of medical necessity. The decision of the physician or other health care provider shall be communicated to the provider and the insured pursuant to subdivision (h).

(f) (1) An insurer shall disclose, or provide for the disclosure, to the commissioner and to network providers, the process the insurer, its contracting provider groups, or any entity with which it contracts for services that include utilization review or utilization management functions, uses to authorize, delay, modify, or deny health care services under the benefits provided by the insurance contract, including coverage for subacute care, transitional inpatient care, or care provided in skilled nursing facilities. An insurer shall also disclose those processes to policyholders or persons designated by a policyholder, or to any other person or organization, upon request.

(2) The criteria or guidelines used by an insurer, or an entity with which an insurer contracts for utilization review or utilization management functions, to determine whether to authorize, modify, delays, or deny health care services, shall:

(A) Be developed with involvement from actively practicing health care providers.

(B) Be consistent with sound clinical principles and processes.

(C) Be evaluated, and updated if necessary, at least annually.

(D) If used as the basis of a decision to modify, delay, or deny services in a specified case under review, be disclosed to the provider and the policyholder in that specified case.

(E) Be available to the public upon request. An insurer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An insurer may charge reasonable fees to cover administrative expenses related to disclosing criteria or guidelines pursuant to this paragraph, limited to copying and postage costs. The insurer may also make the criteria or guidelines available through electronic communication means.

(3) The disclosure require by subparagraph (E) of paragraph (2) shall be accompanied by the following notice: ''The materials provided to you are guidelines used by this insurer to authorize, modify, or deny health care benefits for persons with similar illnesses or conditions. Specific care and treatment may vary depending on individual need and the benefits covered under your insurance contract.

(g) If an insurer subject to this section requests medical information from providers in order to determine whether to approve, modify, or deny requests for authorization, the insurer shall request only the information reasonably necessary to make the determination.

(h) In determining whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with the provision of health care services to insureds, based in whole or in part on medical necessity, every insurer subject to this section shall meet the following requirements:

(1) Decisions to approve, modify, or deny, based on medical necessity, requests by providers prior to, or concurrent with, the provision of health care services to insureds that do not meet the requirements for the 72-hour review required by paragraph (2), shall be made in a timely fashion appropriate for the nature of the insured's condition, not to exceed five business days from the insurer's receipt of the information reasonably necessary and requested by the insurer to make the determination. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of the receipt of information that is reasonably necessary to make this determination, and shall be communicated to the provider in a manner that is consistent with current law. For purposes of this section, retrospective reviews shall be for care rendered on or after January 1, 2000.

(2) 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 the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the insured's life or health or

could jeopardize the insured's ability to regain maximum function, decisions to approve, modify, or deny requests by providers prior to, or concurrent with, the provision of health care services to insureds shall be made in a timely fashion, appropriate for the nature of the insured's condition, but not to exceed 72 hours after the insurer's receipt of the information reasonably necessary and requested by the insurer to make the determination.

(3) Decisions to approve, modify, or deny requests by providers for authorization prior to, or concurrent with, the provision of health care services to insureds shall be communicated to the requesting provider within 24 hours of the decision. Except for concurrent review decisions pertaining to care that is underway, which shall be communicated to the insured's treating provider within 24 hours, decisions resulting in denial, delay, or modification of all or part of the requested health care service shall be communicated to the insured in writing within two business days of the decision. In the case of concurrent review, care shall not be discontinued until the insured's treating provider has been notified of the insurer's decision and a care plan has been agreed upon by the treating provider that is appropriate for the medical needs of that patient.

(4) Communications regarding decisions to approve requests by providers prior to, retrospectively, or concurrent with the provision of health care services to insureds shall specify the specific health care service approved. Responses regarding decisions to deny, delay, or modify health care services requested by providers prior to, retrospectively, or concurrent with the provision of health care services to insureds shall be communicated to insureds in writing, and to providers initially by telephone or facsimile, except with regard to decisions rendered retrospectively, and then in writing, and shall include a clear and concise explanation of the reasons for the insurer's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity. Any written communication to a physician or other health care provider of a denial, delay, or modification or a request shall include the name and telephone number of the health care professional responsible for the denial, delay, or modification. The telephone number provided shall be a direct number or an extension, to allow the physician or health care provider easily to contact the professional responsible for the denial, delay, or modification. Responses shall also include information as to how the provider or the insured may file an appeal with the insurer or seek department review under the unfair practices provisions of Article 6.5 (commencing with Section 790) of Chapter 1 of Part 7 of Division 1 and the regulations adopted thereunder.

(5) If the insurer cannot make a decision to approve, modify, or deny the request for authorization within the timeframes specified in

paragraph (1) or (2) because the insurer is not in receipt of all of the information reasonably necessary and requested, or because the insurer requires consultation by an expert reviewer, or because the insurer has asked that an additional examination or test be performed upon the insured, provided that the examination or test is reasonable and consistent with good medical practice, the insurer shall, immediately upon the expiration of the timeframe specified in paragraph (1) or (2), or as soon as the insurer becomes aware that it will not meet the timeframe, whichever occurs first, notify the provider and the insured, in writing, that the insurer cannot make a decision to approve, modify, or deny the request for authorization within the required timeframe, and specify the information requested but not received, or the expert reviewer to be consulted, or the additional examinations or tests required. The insurer shall also notify the provider and enrollee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the insurer, the insurer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2), whichever applies.

(6) If the commissioner determines that an insurer has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the commissioner may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The administrative penalties shall not be deemed an exclusive remedy for the commissioner. These penalties shall be paid to the Insurance Fund.

(i) Every insurer subject to this section shall maintain telephone access for providers to request authorization for health care services.

(j) Nothing in this section shall cause a disability insurer to be defined as a health care provider for purposes of any provision of law, including, but not limited to, Section 6146 of the Business and Professions Code, Sections 3333.1 and 3333.2 of the Civil Code, and Sections 340.5, 364, 425.13, 667.7, and 1295 of the Code of Civil Procedure.

SEC. 19. Section 10145.3 of the Insurance Code is amended to read:

10145.3. (a) Every disability insurer that covers hospital, medical, or surgical benefits shall provide an external, independent review process to examine the insurer's coverage decisions regarding experimental or investigational therapies for individual insureds who meet all of the following criteria:

(1) (A) The insured has a life-threatening or seriously debilitating condition.

(B) For purposes of this section, ''life-threatening'' means either or both of the following:

(i) Diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted.

(ii) Diseases or conditions with potentially fatal outcomes, where the end point of clinical intervention is survival.

(C) For purposes of this section, ''seriously debilitating'' means diseases or conditions that cause major irreversible morbidity.

(2) The insured's physician certifies that the insured has a condition, as defined in paragraph (1), for which standard therapies have not been effective in improving the condition of the insured, for which standard therapies would not be medically appropriate for the insured, or for which there is no more beneficial standard therapy covered by the insurer than the therapy proposed pursuant to paragraph (3).

(3) Either (A) the insured's contracting physician has recommended a drug, device, procedure, or other therapy that the physician certifies in writing is likely to be more beneficial to the insured than any available standard therapies, or (B) the insured, or the insured's physician who is a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the insured's condition, has requested a therapy that, based on two documents from the medical and scientific evidence, as defined in subdivision (d), is likely to be more beneficial for the insured than any available standard therapy. The physician certification pursuant to this subdivision shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation. Nothing in this subdivision shall be construed to require the insurer to pay for the services of a noncontracting physician, provided pursuant to this subdivision, that are not otherwise covered pursuant to the contract.

(4) The insured has been denied coverage by the insurer for a drug, device, procedure, or other therapy recommended or requested pursuant to paragraph (3), unless coverage for the specific therapy has been excluded by the insurer's contract.

(5) The specific drug, device, procedure, or other therapy recommended pursuant to paragraph (3) would be a covered service except for the insurer's determination that the therapy is experimental or under investigation.

(b) The insurer's decision to deny, delay, or modify experimental or investigational therapies shall be subject to the independent medical review process established under Article 3.5 (commencing with Section 10169) of Chapter 1 of Part 2 of Division 2, except that in lieu of the information specified in subdivision (b) of Section 10169.3, an independent medical reviewer shall base his or her determination on

relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence defined in subdivision (d).

(c) The independent medical review process shall also meet the following criteria:

(1) The insurer shall notify eligible insureds in writing of the opportunity to request the external independent review within five business days of the decision to deny coverage.

(2) If the insured's physician determines that the proposed therapy would be significantly less effective if not promptly initiated, the analyses and recommendations of the experts on the panel shall be rendered within seven days of the request for expedited review. At the request of the expert, the deadline shall be extended by up to three days for a delay in providing the documents required. The timeframes specified in this paragraph shall be in addition to any otherwise applicable timeframes contained in subdivision (c) of Section 10169.3.

(3) Each expert's analysis and recommendation shall be in written form and state the reasons the requested therapy is or is not likely to be more beneficial for the insured than any available standard therapy, and the reasons that the expert recommends that the therapy should or should not be covered by the insurer, citing the insured's specific medical condition, the relevant documents, and the relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence as defined in subdivision (d), to support the expert's recommendation.

(4) Coverage for the services required under this section shall be provided subject to the terms and conditions generally applicable to other benefits under the contract.

(d) For the purposes of subdivision (b), ''medical and scientific evidence'' means the following sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(2) Peer-reviewed literature, biomedical compendia and other medical literature that meet the criteria of the National Institutes of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline and MEDLARS data base Health Services Technology Assessment Research (HSTAR).

(3) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act.

(4) The following standard reference compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association

Accepted Dental Therapeutics and The United States Pharmacopoeia-Drug Information.

(5) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

(e) The independent review process established by this section shall be required on and after January 1, 2001.

SEC. 20. Section 25002 of the Welfare and Institutions Code is amended to read:

25002. To develop the options for achieving universal health care coverage described in Section 25001, the secretary shall establish a process by which these options are developed. The process shall at a minimum include the following:

(a) The examination and utilization of research results from the study performed by the University of California with regard to methods of financing, delivering and defining universal health care coverage, done pursuant to the criteria in Senate Concurrent Resolution 100 of the 1997–1998 Regular Session of the Legislature.

(b) The examination and utilization of other data and information, as requested by the secretary or provided to the secretary, with regard to methods of financing, delivering, or defining universal health care coverage.

(c) Developing a process by which representatives of health care consumers, providers, insurers, health care workers, advocates, counties, and all other interested parties are engaged in discussion and debate of the issues faced by the state in providing universal health coverage. The secretary shall develop the methods by which this discussion occurs, provided that it is broadly inclusive of all groups with an interest in universal health care coverage.

(d) Interagency participation including, but not limited to, the State Department of Health Services, the State Department of Mental Health, the Department of Finance, the Managed Risk Medical Insurance Board, the Department of Consumer Affairs, the Public Employees' Retirement System, the State Department of Social Services, the Department of Managed Health Care, the Department of Insurance, and any other appropriate agencies which the secretary determines can contribute to the effort to provide universal health care coverage.

(e) Obtaining information from the United States Health Care Financing Administration regarding federal waivers or other forms of federal participation, if necessary.

SEC. 21. (a) Section 2.1 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and AB 2414. 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 56.10 of the Civil Code, and (3) SB 1903 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2414, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and SB 1903. 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 56.10 of the Civil Code, (3) AB 2414 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1903 in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by this bill, AB 2414, and SB 1903. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) all three bills amend Section 56.10 of the Civil Code, and (3) this bill is enacted after AB 2414 and SB 1903, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

CHAPTER 1068

An act to amend, repeal, and add Section 56.10 of the Civil Code, and to amend Section 27491.1 of, and to amend, repeal, and add Section 27491.8 of, the Government Code, relating to coroners.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care

service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in

an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical

information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of

health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct

health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.3. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to

information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional

liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or

administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized

manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.4. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with

Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the

patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractor's or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation

officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.5. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the

subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans,

organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.6. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health

facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly

permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety

Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.7. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the

disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractor's or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further

disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or

continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient

or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.8. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to

information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982,

contractor's or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or

health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no

information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.9. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care

service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and

payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation

officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

(f) This section shall become operative on January 1, 2004.

SEC. 1.10. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan,

governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide

research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator

engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.11. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, or health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional

liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.12. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued

under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.13. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any

provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for

health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, plans, organizations, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity

that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.14. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency

medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly

permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent,

or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of

the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, or contractor shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 1.15. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2).

However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's

fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug

Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of chronic disease management programs, information may be disclosed to any entity contracting with a health care service plan to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 1.16. Section 56.10 is added to the Civil Code, to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) When otherwise specifically required by law.

(c) A provider of health care, or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another

provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office.

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a law suit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for

transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms ''tissue bank'' and ''tissue'' have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information including the patient's name, city of residence, age, sex, and general condition may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor

or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

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

SEC. 2. Section 27491.1 of the Government Code is amended to read:

27491.1. In all cases in which a person has died under circumstances that afford a reasonable ground to suspect that the person's death has been occasioned by the act of another by criminal means, the coroner, upon determining that those reasonable grounds exist, shall immediately notify the law enforcement agency having jurisdiction over the criminal investigation. Notification shall be made by the most direct communication available. The report shall state the name of the deceased person, if known, the location of the remains, and other information received by the coroner relating to the death, including any medical information of the decedent that is directly related to the death. The report shall not include any information contained in the decedent's medical records regarding any other person unless that information is relevant and directly related to the decedent's death.

SEC. 3. Section 27491.8 of the Government Code is amended to read:

27491.8. (a) When the coroner seeks a confidential communication of a deceased person that is privileged under Article 6 (commencing with Section 990) or Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, by means of a subpoena or subpoena duces tecum, for the purpose of inquiry into, and determination of, the circumstances, manner, and cause of death as set forth in Section 27491, or for the sole purpose of being introduced as evidence at a coroner's inquest proceeding, the coroner shall provide notice to the decedent's personal representative, appointed by the court, if any personally or at his or her last known address, not less than seven days prior to the date the records are to be delivered to the presiding judge of the superior court. If no personal representative has been appointed by the court, the coroner shall provide notice to the person who has the right to control disposition of the decedent's remains, as defined in paragraphs (1) to (4), inclusive, of subdivision (a) of, and paragraphs (1) and (2) of subdivision (b) of Section 7100 of the Health and Safety Code, to the extent known. The notice shall inform the personal representative or the person with the right to control disposition of the decedent's remains that he or she may provide to the court a written objection to the

disclosure or to any part thereof, on or before the date for delivery thereof to the court. The custodian shall deliver the records to the presiding judge of the superior court in a confidential manner. The presiding judge shall examine the records in camera. If there is good cause, the presiding judge shall direct the custodian to disclose to the coroner those portions of the records which the judge determines are relevant to the coroner's inquiry or inquest.

(b) A communication made available to the coroner pursuant to this section is confidential, and shall not be distributed or made available to any other person, agency, firm, or corporation, except as follows:

(1) When introduced into evidence at a coroner's inquest proceeding.

(2) When included in a coroner's official report for the purpose of establishing the cause, manner, and circumstances of death.

(3) When otherwise required by law.

(c) This communication shall not be admissible as former testimony pursuant to Article 9 (commencing with Section 1290) of Chapter 2 of Division 10 of the Evidence Code unless otherwise admissible by law.

(d) After the investigation or inquest has terminated, the court shall order the records produced to the coroner containing the confidential communication to be sealed or destroyed if necessary to protect the confidentiality of the decedent's medical or mental health information.

(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. 4. Section 27491.8 is added to the Government Code, to read:

27491.8. (a) When the coroner seeks a confidential communication of a deceased person that is privileged under Article 6 (commencing with Section 990) or Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, by means of a subpoena or subpoena duces tecum, for the purpose of inquiry into, and determination of, the circumstances, manner, and cause of death as set forth in Section 27491, or for the sole purpose of being introduced as evidence at a coroner's inquest proceeding, the coroner shall provide notice to the decedent's personal representative personally or at his or her last known address, not less than 15 days prior to the date the records are to be delivered to the presiding judge of the superior court. The notice shall inform the personal representative that he or she may provide to the court a written objection to the disclosure or to any part thereof, on or before the date for delivery thereof to the court. The custodian shall deliver the records to the presiding judge of the superior court in a confidential manner. The presiding judge shall examine the records in camera. If there is good cause, the presiding judge shall direct the custodian to disclose to the coroner those portions of the records which the judge determines are relevant to the coroner's inquiry or inquest.

(b) A communication made available to the coroner pursuant to this section is confidential, except insofar as it is introduced into evidence at a coroner's inquest proceeding, and shall not be distributed or made available to any other person, agency, firm, or corporation.

(c) This communication shall not be admissible as former testimony pursuant to Article 9 (commencing with Section 1290) of Chapter 2 of Division 10 of the Evidence Code.

(d) After the investigation or inquest has terminated, the court shall order the records thereof to be sealed as necessary to protect the confidentiality of the decedent's medical or mental health information.

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

SEC. 5. (a) Sections 1.2 and 1.10 of this bill incorporate amendments to Section 56.10 of the Civil Code proposed by both this bill and AB 2414. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56.10 of the Civil Code, (3) SB 1903 and SB 2094 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 2414, in which case Sections 1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.11, 1.12, 1.13, 1.14, 1.15, and 1.16 of this bill shall not become operative.

(b) Sections 1.3 and 1.11 of this bill incorporate amendments to Section 56.10 of the Civil Code proposed by both this bill and SB 1903. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56.10 of the Civil Code, (3) AB 2414 and SB 2094 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1903, in which case Sections 1, 1.2, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.12, 1.13, 1.14, 1.15, and 1.16 of this bill shall not become operative.

(c) Sections 1.4 and 1.12 of this bill incorporate amendments to Section 56.10 of the Civil Code proposed by both this bill and SB 2094. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56.10 of the Civil Code, (3) AB 2414 and SB 1903 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 2094, in which case Sections 1, 1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.13, 1.14, 1.15, and 1.16 of this bill shall not become operative.

(d) Sections 1.5 and 1.13 of this bill incorporate amendments to Section 56.10 of the Civil Code proposed by this bill, AB 2414, and SB 1903. They shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56.10 of the Civil Code, (3) SB 2094 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2414

and SB 1903, in which case Sections 1, 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.14, 1.15, and 1.16 of this bill shall not become operative.

(e) Sections 1.6 and 1.14 of this bill incorporate amendments to Section 56.10 of the Civil Code proposed by this bill, AB 2414, and SB 2904. They shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56.10 of the Civil Code, (3) SB 1903 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2414 and SB 2094, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.15, and 1.16 of this bill shall not become operative.

(f) Sections 1.7 and 1.15 of this bill incorporate amendments to Section 56.10 of the Civil Code proposed by this bill, SB 1903, and SB 2904. They shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56.10 of the Civil Code, (3) AB 2414 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1903 and SB 2094, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, and 1.16 of this bill shall not become operative.

(g) Sections 1.8 and 1.16 of this bill incorporate amendments to Section 56.10 of the Civil Code proposed by this bill, AB 2414, SB 1903, and SB 2094. They shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 56.10 of the Civil Code, (3) this bill is enacted after AB 2414, SB 1903, and SB 2094, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, and 1.15 of this bill shall not become operative.

CHAPTER 1069

An act to amend Section 511.1 of the Business and Professions Code, to amend Section 1395.6 of the Health and Safety Code, to amend Section 10178.3 of the Insurance Code, and to amend Sections 4603.2 and 4609 of the Labor Code, relating to health care coverage.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Section 511.1 of the Business and Professions Code is amended to read:

511.1. (a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the Legislature that every arrangement that results in a payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed to the provider in advance and that the payor shall actively encourage beneficiaries to use the network, unless the health care provider agrees to provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage a payor's beneficiaries to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged its beneficiaries to use the list of contracted providers if one of the following occurs:

(A) The payor's contract with subscribers or insureds offers beneficiaries direct financial incentives to use the list of contracted providers when obtaining medical care. ''Financial incentives'' means reduced copayments, reduced deductibles, premium discounts directly attributable to the use of a provider panel, or financial penalties directly attributable to the nonuse of a provider panel.

(B) The payor provides information directly to its beneficiaries, who are parties to the contract, or, in the case of workers' compensation insurance, the employer, advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to beneficiaries in advance of their selection of a health care provider, which approaches may include, but are not limited to, the use of provider directories, or the use of toll-free telephone numbers or internet web site addresses supplied directly to every beneficiary. However, internet web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a beneficiary.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the payors' beneficiaries to use the list of contracted providers when obtaining medical care. Nothing in this subdivision shall be construed to require a payor to actively encourage the payor's beneficiaries to use the list of contracted providers when obtaining medical care in the case of an emergency.

(4) Disclose, upon the initial signing of a contract, and within 30 calendar days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreements with any contracting agent.

(5) Allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care as described in paragraph (2). Each provider's election under this paragraph shall be binding on the contracting agent with which the provider has the contract and on any other contracting agent that buys, leases, or otherwise obtains the list of contracted providers. A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care.

(6) Nothing in this subdivision shall be construed to impose requirements or regulations upon payors, as defined in subparagraph (A) of paragraph (3) of subdivision (d).

(c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:

(1) Provide an explanation of benefits or explanation of review that identifies the name of the plan or network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered.

(2) Demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The failure of a payor to make the demonstration within 30 business days shall render the payor responsible for the amount that the payor would have been required to pay pursuant to the contract between the payor and the beneficiary,

which amount shall be due and payable within 10 business days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this paragraph. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(A) Discloses the name of the network that has a written agreement with the provider whereby the provider agrees to accept discounted rates, and describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b).

(B) Identifies the provider's written agreement with a contracting agent whereby the provider agrees to be included on lists of contracted providers sold, leased, transferred, or conveyed to payors that do not actively encourage beneficiaries to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).

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

(1) ''Beneficiary'' means:

(A) For workers' compensation insurance, an employee seeking health care services for a work-related injury.

(B) For automobile insurance, those persons covered under the medical payments portion of the insurance contract.

(C) For group or individual health services covered through a health care service plan contract, including a specialized health care service plan contract, or a policy of disability insurance that covers hospital, medical, or surgical benefits, a subscriber, an enrollee, a policyholder, or an insured.

(2) ''Contracting agent'' means a third-party administrator or trust not licensed under the Health and Safety Code, the Insurance Code, or the Labor Code, a self-insured employer, a preferred provider organization, or an independent practice association, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying, a provider or provider panel to provide health care services to beneficiaries. For purposes of this section, a contracting agent shall not include a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, or a self-insured employer.

(3) (A) For purposes of subdivision (b), ''payor'' means a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance,

workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

(B) For purposes of subdivision (c), ''payor'' means only those entities that provide coverage for hospital, medical, or surgical benefits that are not regulated under the Health and Safety Code, the Insurance Code, or the Labor Code.

(4) ''Payor summary'' means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(5) ''Provider'' means any of the following:

(A) Any person licensed or certified pursuant to this division.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(E) Any entity exempt from licensure pursuant to Section 1206 of the Health and Safety Code.

(e) This section shall become operative on July 1, 2000.

SEC. 2. Section 1395.6 of the Health and Safety Code is amended to read:

1395.6. (a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the Legislature that every arrangement that results in a payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed to the provider in advance and that the payor shall actively encourage beneficiaries to use the network, unless the health care provider agrees to provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose to the provider whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage a payor's beneficiaries to use the list of contracted providers

when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged its beneficiaries to use the list of contracted providers if one of the following occurs:

(A) The payor's contract with subscribers or insureds offers beneficiaries direct financial incentives to use the list of contracted providers when obtaining medical care. ''Financial incentives'' means reduced copayments, reduced deductibles, premium discounts directly attributable to the use of a provider panel, or financial penalties directly attributable to the nonuse of a provider panel.

(B) The payor provides information to its beneficiaries, who are parties to the contract, or, in the case of workers' compensation insurance, the employer, advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to beneficiaries in advance of their selection of a health care provider, which approaches may include, but are not limited to, the use of provider directories, or the use of toll-free telephone numbers or Internet web site addresses supplied directly to every beneficiary. However, internet web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a beneficiary.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the payors' beneficiaries to use the list of contracted providers when obtaining medical care. Nothing in this subdivision shall be construed to require a payor to actively encourage the payor's beneficiaries to use the list of contracted providers when obtaining medical care in the case of an emergency.

(4) Disclose, upon the initial signing of a contract, and within 30 calendar days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreement with any contracting agent.

(5) Allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care as described in paragraph (2). Each provider's election under this paragraph shall be binding on the contracting agent with which the provider has the contract

and any contracting agent that buys, leases, or otherwise obtains the list of contracted providers. A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care.

(6) Nothing in this subdivision shall be construed to impose requirements or regulations upon payors, as defined in subparagraph (A) of paragraph (3) of subdivision (d).

(c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:

(1) Provide an explanation of benefits or explanation of review that identifies the name of the network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered.

(2) Demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The failure of a payor to make the demonstration within 30 business days shall render the payor responsible for the amount that the payor would have been required to pay pursuant to the applicable health care service plan contract, including a specialized health care service plan contract, covering the beneficiary, which amount shall be due and payable within 10 business days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this paragraph. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(A) Discloses the name of the network that has a written agreement with the provider whereby the provider agrees to accept discounted rates, and describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b).

(B) Identifies the provider's written agreement with a contracting agent whereby the provider agrees to be included on lists of contracted providers sold, leased, transferred, or conveyed to payors that do not actively encourage beneficiaries to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).

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

(1) ''Beneficiary'' means:

(A) For workers' compensation insurance, an employee seeking health care services for a work-related injury.

(B) For automobile insurance, those persons covered under the medical payments portion of the insurance contract.

(C) For group or individual health services covered through a health care service plan contract, including a specialized health care service plan contract, or a policy of disability insurance that covers hospital, medical, or surgical benefits, a subscriber, an enrollee, a policyholder, or an insured.

(2) ''Contracting agent'' means a health care service plan, including a specialized health care service plan, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying, a provider or provider panel to payors to provide health care services to beneficiaries.

(3) (A) For the purposes of subdivision (b), ''payor'' means a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

(B) For the purposes of subdivision (c), ''payor'' means only a health care service plan, including a specialized health care service plan that has purchased, leased, or otherwise obtained the use of a provider or provider panel to provide health care services to beneficiaries pursuant to a contract that authorizes payment at discounted rates.

(4) ''Payor summary'' means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(5) ''Provider'' means any of the following:

(A) Any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200).

(E) Any entity exempt from licensure pursuant to Section 1206.

(e) This section shall become operative on July 1, 2000.

SEC. 3. Section 10178.3 of the Insurance Code is amended to read:

10178.3. (a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the

Legislature that every arrangement that results in a payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed to the provider in advance and that the payor shall actively encourage beneficiaries to use the network, unless the health care provider agrees to provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage a payor's beneficiaries to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged its beneficiaries to use the list of contracted providers if one of the following occurs:

(A) The payor's contract with subscribers or insureds offers beneficiaries direct financial incentives to use the list of contracted providers when obtaining medical care. ''Financial incentives'' means reduced copayments, reduced deductibles, premium discounts directly attributable to the use of a provider panel, or financial penalties directly attributable to the nonuse of a provider panel.

(B) The payor provides information to its beneficiaries, who are parties to the contract, or, in the case of workers' compensation insurance, the employer, advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to beneficiaries in advance of their selection of a health care provider, which approaches may include, but are not limited to, the use of provider directories, or the use of toll-free telephone numbers or internet web site addresses supplied directly to every beneficiary. However, internet web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a beneficiary.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay

a provider's contracted rate without actively encouraging the payors' beneficiaries to use the list of contracted providers when obtaining medical care. Nothing in this subdivision shall be construed to require a payor to actively encourage the payor's beneficiaries to use the list of contracted providers when obtaining medical care in the case of an emergency.

(4) Disclose, upon the initial signing of a contract, and within 30 calendar days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreements with any contracting agent.

(5) Allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care as described in paragraph (2). Each provider's election under this paragraph shall be binding on the contracting agent with which the provider has a contract and any other contracting agent that buys, leases, or otherwise obtains the list of contracted providers. A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the payors' beneficiaries to use the list of contracted providers when obtaining medical care.

(6) Nothing in this subdivision shall be construed to impose requirements or regulations upon payors, as defined in subparagraph (A) of paragraph (3) of subdivision (d).

(c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:

(1) Provide an explanation of benefits or explanation of review that identifies the name of the network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered.

(2) Demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The failure of a payor to make the demonstration within 30 business days shall render the payor responsible for the amount that the payor would have been required to pay pursuant to the beneficiary's policy with the payor, which amount shall be due and payable within 10 business days of receipt of written notice from the provider, and shall bar the payor from taking any future

discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this subdivision. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(A) Discloses the name of the network that has a written agreement with the provider whereby the provider agrees to accept discounted rates, and describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b).

(B) Identifies the provider's written agreement with a contracting agent whereby the provider agrees to be included on lists of contracted providers sold, leased, transferred, or conveyed to payors that do not actively encourage beneficiaries to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).

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

(1) ''Beneficiary'' means:

(A) For automobile insurance, those persons covered under the medical payments portion of the insurance contract.

(B) For group or individual health services covered through a health care service plan contract, including a specialized health care service plan contract, or a policy of disability insurance that covers hospital, medical, or surgical benefits, a subscriber, an enrollee, a policyholder, or an insured.

(C) For workers' compensation insurance, an employee seeking health care services for a work-related injury.

(2) ''Contracting agent'' means an insurer licensed under this code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying a provider or provider panel to provide health care services to beneficiaries.

(3) (A) For the purposes of subdivision (b), ''payor'' means a health care service plan, including a specialized health care service plan, an insurer licensed under this code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

(B) For the purposes of subdivision (c), ''payor'' means only an insurer licensed under this code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, if that insurer is responsible to pay for health care services provided to beneficiaries.

(4) ''Payor summary'' means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(5) ''Provider'' means any of the following:

(A) Any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(E) Any entity exempt from licensure pursuant to Section 1206 of the Health and Safety Code.

(e) This section shall become operative on July 1, 2000.

SEC. 4. Section 4603.2 of the Labor Code is amended to read:

4603.2. (a) Upon selecting a physician pursuant to Section 4600, the employee or physician shall forthwith notify the employer of the name and address of the physician. The physician shall submit a report to the employer within five working days from the date of the initial examination and shall submit periodic reports at intervals that may be prescribed by rules and regulations adopted by the administrative director.

(b) Payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made by the employer within 60 days after receipt of each separate, itemized billing, together with any required reports. If the billing or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the billing is contested, denied, or considered incomplete, within 30 working days after receipt of the billing by the employer. A notice that a billing is incomplete shall state all additional information required to make a decision. Any properly documented amount not paid within the 60-day period shall be increased by 10 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the bill, unless the employer does both of the following:

(1) Pays the uncontested amount within the 60-day period.

(2) Advises, in the manner prescribed by the administrative director, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of a bill which includes charges from a hospital, outpatient surgery center, or

independent diagnostic facility, advice that a request has been made for an audit of the bill shall satisfy the requirements of this paragraph.

If an employer contests all or part of a billing, any amount determined payable by the appeals board shall carry interest from the date the amount was due until it is paid.

An employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.

(c) Any interest or increase in compensation paid by an insurer pursuant to this section shall be treated in the same manner as an increase in compensation under subdivision (d) of Section 4650 for the purposes of any classification of risks and premium rates, and any system of merit rating approved or issued pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code.

SEC. 5. Section 4609 of the Labor Code is amended to read:

4609. (a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the Legislature that every arrangement that results in any payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed by the contracting agent to the provider in advance and shall actively encourage employees to use the network, unless the health care provider agrees to provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (e), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage employees to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged employees to use the list of contracted providers if the employer provides information directly to employees during the period the employer has medical control advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to employees; or in advance of a

workplace injury, or upon notice of an injury or claim by an employee, the approaches may include, but are not limited to, the use of provider directories, the use of a list of all contracted providers in an area geographically accessible to the posting site, the use of wall cards that direct employees to a readily accessible listing of those providers at the same location as the wall cards, the use of wall cards that direct employees to a toll-free telephone number or internet web site address, or the use of toll-free telephone numbers or internet web site addresses supplied directly during the period the employer has medical control. However, internet web site addresses alone shall not be deemed to satisfy the requirements of this paragraph. Nothing in this paragraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of an employee. A payor who otherwise meets the requirements of this paragraph is deemed to have met the requirements of this paragraph regardless of the employer's ability to control medical treatment pursuant to Sections 4600 and 4600.3.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the employees to use the list of contracted providers when obtaining medical care. Nothing in this subdivision shall be construed to require a payor to actively encourage the employees to use the list of contracted providers when obtaining medical care in the case of an emergency.

(4) Disclose, upon the initial signing of a contract, and within 15 business days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreements with any contracting agent.

(5) Allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the employees to use the list of contracted providers when obtaining medical care as described in paragraph (2). Each provider's election under this paragraph shall be binding on the contracting agent with which the provider has the contract and any other contracting agent that buys, leases, or otherwise obtains the list of contracted providers.

A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the employees to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or

conveyed to payors that do not actively encourage the employees to use the list of contracted providers when obtaining medical care.

(6) If the payor's explanation of benefits or explanation of review does not identify the name of the network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered, the contracting agent shall do the following:

(A) Maintain a web site that is accessible to all contracted providers and updated at least quarterly and maintain a toll-free telephone number accessible to all contracted providers whereby providers may access payor summary information.

(B) Disclose through the use of an Internet web site, a toll-free telephone number, or through a delivery or mail service to its contracted providers, within 30 days, any sale, lease assignment, transfer or conveyance of the contracted reimbursement rates to another contracting agent or payor.

(7) Nothing in this subdivision shall be construed to impose requirements or regulations upon payors, as defined in subparagraph (A) of paragraph (3) of subdivision (e).

(c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (e), shall do all of the following:

(1) Provide an explanation of benefits or explanation of review that identifies the name of the network with which the payor has an agreement that entitles them to pay a preferred rate for the services rendered.

(2) Demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The provider shall include in the request a statement explaining why the payment is not at the correct contracted rate for the services provided. The failure of the provider to include a statement shall relieve the payor from the responsibility of demonstrating that it is entitled to pay the disputed contracted rate. The failure of a payor to make the demonstration to a properly documented request of the provider within 30 business days shall render the payor responsible for the lesser of the provider's actual fee or, as applicable, any fee schedule pursuant to division, which amount shall be due and payable within 10 days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this subdivision. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(A) Describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b), and demonstrates compliance with paragraph (1).

(B) Identifies the contracting agent with whom the payor has a written agreement whereby the payor is not required to actively encourage employees to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).

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

(1) ''Contracting agent'' means an insurer licensed under the Insurance Code to provide workers' compensation insurance, a health care service plan, including a specialized health care service plan, a preferred provider organization, or a self-insured employer, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying a provider or provider panel to provide health care services to employees for work-related injuries.

(2) ''Employee'' means a person entitled to seek health care services for a work-related injury.

(3) (A) For the purposes of subdivisions (b) and (c), ''payor'' means a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

(B) For the purposes of subdivision (d), ''payor'' means an insurer licensed under the Insurance Code to provide workers' compensation insurance, a self-insured employer, a third party administrator or trust, or any other third part that is responsible to pay health care services provided to employees for work-related injuries, or an agent of an entity included in this definition.

(4) ''Payor summary'' means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(5) ''Provider'' means any of the following:

(A) Any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(E) Any entity exempt from licensure pursuant to Section 1206 of the Health and Safety Code.

(f) This section shall become operative on July 1, 2000.

SEC. 6. The amendments made by this act to Section 511.1 of the Business and Professions Code, Section 1395.6 of the health and Safety Code, Section 10178.3 of the Insurance Code, and Sections 4603.2 and 4609 of the Labor Code do not apply retroactively, and shall become operative on January 1, 2001.

CHAPTER 1070

An act to add Chapter 4 (commencing with Section 16300) to Part 1 of Division 7 of the Business and Professions Code, relating to business licensing.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 4 (commencing with Section 16300) is added to Part 1 of Division 7 of the Business and Professions Code, to read:

CHAPTER 4. EMPLOYMENT ACTIVITIES

16300. (a) Notwithstanding any other provision of this part, Chapter 1.5 (commencing with Section 7284) of Part 1.7 of Division 2 of the Revenue and Taxation Code, or Chapter 3 (commencing with Section 37100) of Part 2 of Division 2 of Title 4 of the Government Code, no city, including a charter city, city and county, or county may require an employee to obtain a business license or home business occupation permit for, or impose a business tax or registration fee based on income earned for services performed for an employer by the employee in an employment relationship as determined by reference to the common law factors as reflected in rulings or guidelines used by either the Internal Revenue Service or the Franchise Tax Board. When there is a dispute between a local jurisdiction and a taxpayer, the manner in which a taxpayer reports or reported income to the Franchise Tax Board or the Internal Revenue Service shall create a presumption regarding whether the taxpayer performed services for an employer as

an employee or operated a business entity. For purposes of this section, ''income'' includes income paid currently or deferred and income that is fixed or contingent.

(b) Nothing in this section shall be interpreted to limit the authority of a local jurisdiction to adopt and enforce zoning, health and safety ordinances, or regulations that define and limit activities that are permissible within its jurisdiction for the purposes of health, safety, welfare, and the provisions of applicable noise ordinances.

SEC. 2. This act shall only become operative if this act and Assembly Bill 1992 of the 1999–2000 Regular Session are both enacted and become effective on or before January 1, 2001.

CHAPTER 1071

An act to amend Section 12657 of, and to add Sections 12582.7, 12585.8, 12585.9, 12643, 12661.2, 12670.7, 12670.8, 12670.14, 12670.16, 12670.20, 12684.2, 12684.4, 12684.6, 12684.8, 12706.3, 12721.5, 12721.7, and 12721.8 to, and to repeal and add Section 12585.7 of, the Water Code, relating to water.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. The Legislature finds and declares that the impacts of flooding can be reduced through better coordination of floodplain management decisions. It is the intent of the Legislature that the Governor establish a floodplain management task force with broad membership from the local, state, and federal government and stakeholders with an interest in flood control. If the task force is established, it is the intent of the Legislature that it examine specific issues related to state and local floodplain management, including, but not limited to, features that substantially reduce potential flood damages, and make recommendations for more effective statewide floodplain management policies.

SEC. 2. Section 12582.7 is added to the Water Code, to read:

12582.7. (a) A flood management project that receives financial assistance under this chapter and Chapter 3 (commencing with Section 12800) shall meet all of the following requirements prior to state authorization:

(1) The project shall qualify for federal financial assistance under the requirements applicable to federal water resource development projects

and shall be federally authorized. Projects may be authorized pursuant to a Chief Engineers' report, but shall not be eligible for state financial assistance until authorized by Congress.

(2) The total annual benefit of providing protection from flood damages shall exceed the annual cost of the project allocable to flood management. The project shall be designed to produce the greatest feasible reduction in flood damages in the most efficient manner practicable, with due regard for environmental and recreational considerations, and local economic conditions.

(3) The project's nonfederal sponsor, or other appropriate local agency, shall be in compliance with Section 701b-12 of Title 33 of the United States Code, which requires the preparation, adoption, and implementation of a floodplain management plan designed to reduce the impacts of future floods. All local communities benefiting from the project shall have an ordinance consistent with the National Flood Insurance Program's model floodplain management ordinance.

(4) The project shall avoid, minimize, or mitigate impacts to environmental and recreational values.

(5) Project planning documents shall include an evaluation of opportunities to include multipurpose objectives. The nonfederal sponsor shall accommodate other partners that provide the costs of including multipurpose objectives that the nonfederal sponsor determines are compatible with the project's schedule and primary flood management purpose.

(b) (1) The Reclamation Board or department, in its advisory role, shall provide sufficient review and oversight in the initial scoping process, feasibility evaluation, environmental review, and project approval processes for flood management projects to determine whether the requirements set forth in subdivision (a) are met. The department or the Reclamation Board shall inform the nonfederal sponsor and any local sponsor whether the project meets the requirements set forth in subdivision (a) during the feasibility evaluation and environmental review process. Prior to state authorization, the department or the Reclamation Board shall submit a report to the Legislature that indicates whether the project meets the requirements set forth in subdivision (a).

(2) The implementation of paragraph (1) in any fiscal year is contingent upon the appropriation of sufficient funds, as determined by the department, for the purposes of carrying out that paragraph.

(c) Notwithstanding paragraph (2) of subdivision (a), the department or the Reclamation Board may recommend, and the Legislature may authorize, flood control projects for which the total annual benefit of providing protection from flood damages does not exceed the annual cost of the project allocable to flood management if the project increases

the level of flood protection for state transportation facilities or state water supply facilities.

SEC. 3. Section 12585.7 of the Water Code is repealed.

SEC. 4. Section 12585.7 is added to the Water Code, to read:

12585.7. Notwithstanding any other provision of this chapter, Chapter 2 (commencing with Section 12639), or Chapter 3 (commencing with Section 12800), the following requirements apply to projects authorized by the Legislature on or after January 1, 2002, and to small flood management projects authorized by Section 12750 for which the department makes the findings required by Section 12750.1 on or after January 1, 2002.

(a) The state shall pay 50 percent of the nonfederal capital costs required by Section 2213 of Title 33 of the United States Code.

(b) The state shall pay 50 percent of the nonfederal capital costs of fish, wildlife, and recreation mitigation.

(c) The state shall pay 50 percent of the nonfederal planning and engineering costs required by Section 2215(b) of Title 33 of the United States Code and the nonfederal design costs required by Section 2215(c) of Title 33 of the United States Code.

(d) The state share of the nonfederal capital costs authorized in subdivision (a), (b), and (c) may be increased by up to an additional 20 percent, to a maximum of 70 percent, upon the recommendation of the department or the Reclamation Board, if either entity determines that the project will result in a significant contribution to any of the following objectives:

(1) Protects, creates, enhances, or provides opportunities for enhancement of endangered species, riparian, aquatic, terrestrial, or other important habitats.

(2) Protects or enhances open space.

(3) Develops or enhances recreational opportunities that include, but shall not be limited to, picnic areas, foot and bike paths, and provides public access to all or nearly all of the project works, except those areas where public access would constitute a threat to public safety or habitat or would constitute a trespass on private property.

(4) Increases the level of flood protection within the benefitted area of the project, if that area has a median household income that is less than 120 percent of the poverty level, as defined by the Department of Finance, Population Research Unit, for the year in which the project would be authorized.

(5) Increases the level of flood protection for state transportation facilities or state water supply facilities.

(e) (1) The department or Reclamation Board shall include their recommendations with regard to increased cost sharing in the report

prepared pursuant to subdivision (b) of Section 12582.7, if so prepared, or in any addendum to that report.

(2) The department or Reclamation Board shall determine whether the project will result in a significant contribution to the prescribed objectives based upon substantial evidence in the record. The department shall develop, by regulation pursuant to Section 12601, criteria for making the determinations as to whether projects will make significant contributions to the objectives described in subdivision (d).

(f) The state payments under subdivisions (a) and (b) are subject to Section 12585.1. State payments under subdivision (c) are not subject to Section 12585.1.

SEC. 5. Section 12585.8 is added to the Water Code, to read:

12585.8. For all projects funded in accordance with Section 12585.7, the local agency shall receive credit against its share for the value of the lands, easements, and rights-of-way, for lands required for the project, to the extent authorized under federal law. The amount of the credit shall be determined by the department or the Reclamation Board by applying the percentage amount determined in 12585.7 to the actual amount of any credit determined by the United States Army Corps of Engineers.

SEC. 6. Section 12585.9 is added to the Water Code, to read:

12585.9. The department or the Reclamation Board shall review flood control projects prior to authorization for the purposes of determining whether the project's individual and cumulative hydraulic impacts are mitigated, as required by Division 13 (commencing with Section 21000) of the Public Resources Code. The department or the Reclamation Board shall include the determination in the report to the Legislature required by subdivision (b) of Section 12582.7, if the report is prepared.

SEC. 7. Section 12643 is added to the Water Code, to read:

12643. Prior to any local agency receiving payment or reimbursement pursuant to Section 12585.5 or 12585.7, for projects authorized on or after January 1, 2001, the agency shall enter into an agreement with the department or Reclamation Board pursuant to which the agency agrees to indemnify and hold and save the state, and its officers, agents, and employees, harmless from any and all liability for damages, as provided in Sections 12642 and 12828.

SEC. 8. Section 12657 of the Water Code is amended to read:

12657. (a) Except as otherwise provided in Chapter 1 (commencing with Section 12570) and this chapter, the Reclamation Board shall give assurances satisfactory to the Secretary of the Army that the local cooperation, required by Section 3 of the act of Congress approved December 22, 1944 (P.L. 534, 78th Congress, Second Session), Section 2 of the act of Congress approved August 18, 1941

(P.L. 228, 78th Congress, First Session), and Section 103 of the act of Congress approved November 17, 1986 (P.L. 99-662, 99th Congress, Second Session) will be furnished by the state in connection with the flood control projects authorized and adopted in Sections 12648, 12648.1, 12648.2, 12648.3, 12648.4, 12648.5, 12648.6, 12648.7, 12649.1, 12650, 12651, 12652, 12654, 12656.5, 12661.2, 12661.5, 12666, 12667, 12670.2, 12670.7, 12670.10, 12670.14, and 12670.20 and on any flood control projects on any stream flowing into or in the Sacramento Valley or the San Joaquin Valley heretofore or hereafter approved and authorized by Congress.

(b) Assurances provided pursuant to subdivision (a) shall not be made until the local agency, by binding agreement with the Reclamation Board, has agreed to assume all obligations under Sections 12585 to 12585.5, inclusive.

SEC. 9. Section 12661.2 is added to the Water Code, to read:

12661.2. (a) The project for flood control on the Tule River, Success Reservoir Enlargement Project, is adopted and authorized substantially in accordance with the recommendations of the Chief of Engineers of the United States Army Corps of Engineers, in the report ''Tule River Basin Investigation, California, Feasibility Report,'' dated April 1999, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state cooperation, upon the recommendation and advice of the Reclamation Board.

(b) The agencies that are parties to the Tule River Improvement Joint Powers Agreement may, in lieu of the Reclamation Board, give assurances satisfactory to the Secretary of the Army that the nonfederal cooperation required by federal law will be furnished in connection with the project for flood control adopted and authorized in subdivision (a).

(c) The agencies that are parties to the Tule River Improvement Joint Powers Agreement, in conjunction with the Department of the Army, may, in lieu of the Reclamation Board, carry out the design and construction of the Success Reservoir Enlargement Project and may make modifications and amendments as necessary to carry out the project for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

SEC. 10. Section 12670.7 is added to the Water Code, to read:

12670.7. (a) The project for flood protection along the Feather River and Yuba River is adopted and authorized substantially in accordance with the recommendations of the Chief of Engineers of the United States Army Corps of Engineers, in the report entitled ''Yuba River Basin Investigation, California Feasibility Report.''

(b) Notwithstanding subdivision (e) of Section 12585.5, the nonfederal engineering costs and the nonfederal design costs required by Section 2215 (b) and (c) of Title 33 of the United States Code, with

regard to the project described in subdivision (a), are eligible for reimbursement by the state before federal and state authorization and before the appropriation of construction funds by Congress.

(c) Funds shall be appropriated for the project in the annual Budget Act.

SEC. 11. Section 12670.8 is added to the Water Code, to read:

12670.8. (a) The project for flood protection measures on the Upper Guadalupe River in Santa Clara County is adopted and authorized substantially in accordance with the recommendations of the Chief of Engineers of the United States Army Corps of Engineers in a report dated August 19, 1998, or as that report may be subsequently modified, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state cooperation, upon the recommendation and advice of the department. The department may pay 50 percent of the nonfederal capital costs of the recreation and fish and wildlife enhancement features of the project.

(b) The Santa Clara Valley Water District shall give assurances satisfactory to the Secretary of the Army that local cooperation required by the final report of the Chief of Engineers of the United States Army Corps of Engineers will be furnished by the district in connection with the project for flood control adopted and authorized in subdivision (a).

(c) The Santa Clara Valley Water District, in conjunction with the Department of the Army, shall carry out the plans and project and may make modifications and amendments to the plans as necessary to carry out the plans for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

SEC. 12. Section 12670.14 is added to the Water Code, to read:

12670.14. The following projects in areas within the City of Sacramento and the Counties of Sacramento and Sutter are adopted and authorized at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the department or the Reclamation Board:

(a) The project for flood control in the Natomas and North Sacramento areas adopted and authorized by Congress in Section 9159 of the Department of Defense Appropriations Act of 1993 (P.L. 102-396) substantially in accordance with the recommendations of the Chief of Engineers in the report entitled ''American River Watershed Investigation'' dated July 1, 1992.

(b) The project for flood control along the American and Sacramento Rivers adopted and authorized by Congress in Section 101(a)(1) of the Water Resources Development Act of 1996 substantially in accordance with the recommendations of the Chief of Engineers in the report entitled ''American River Watershed Project, California'' dated June 27, 1996,

as modified by Congress in Section 366 of the Water Resources Development Act of 1999.

(c) The project to modify Folsom Dam adopted and authorized by Congress in Section 101(a)(6) of the Water Resources Development Act of 1999, as described in the United States Army Corps of Engineers Supplemental Information Report for the American River Watershed Project, California, dated March 1996, as modified by the report entitled ''Folsom Dam Modification Report, New Outlets Plan,'' dated March 1998, prepared by the Sacramento Area Flood Control Agency.

(d) The project for flood control, environmental restoration, and recreation along south Sacramento County streams adopted and authorized by Congress in Section 101(a)(7) of the Water Resources Development Act of 1999 as described in the report of the Chief of Engineers entitled ''South Sacramento County Streams, California'' dated October 6, 1998.

SEC. 13. Section 12670.16 is added to the Water Code, to read:

12670.16. With regard to the projects for flood control authorized in Section 12670.14, the Sacramento Area Flood Control Agency shall be reimbursed pursuant to Section 12585.5 for any costs of those projects that the agency advances on behalf of the department or Reclamation Board, provided that prior to any such reimbursement, the agency shall execute an agreement with the department under which it agrees to indemnify and hold the state harmless from damages due to the construction, operation, or maintenance of those projects and agrees to operate, maintain, repair, replace, and rehabilitate those projects, or provide the agreement of its appropriate member agency to do so.

SEC. 14. Section 12670.20 is added to the Water Code, to read:

12670.20. (a) The projects for flood protection and integrated resource management in the Colusa Basin are adopted and authorized substantially in accordance with the ''Colusa Basin Water Management Program'' dated February 1995 and its final environmental documentation, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation, upon the recommendation and advice of the department or the Reclamation Board.

(b) The state, any local public agency, or other entity may cooperate with any federal agency with regard to the planning, design, environmental compliance, financing, and construction of projects authorized in subdivision (a).

(c) No state funds shall be expended for the projects described in subdivision (a) unless both of the following requirements are met:

(1) Required environmental documentation has been completed.

(2) The Reclamation Board has approved the Colusa Basin Water Management Program and the projects described in subdivision (a).

(d) Except as specified in subdivision (c), for projects authorized in subdivision (a), the state shall pay both of the following:

(1) That portion of nonfederal capital costs attributable to flood control required by Section 12585.5, or that may be required by amendment to Chapter 1 (commencing with Section 12570).

(2) That portion of nonfederal costs for fish, wildlife, and recreational enhancement features established by Chapter 3.5 (commencing with Section 12840).

(e) If required by the Secretary of the Interior, the Reclamation Board may give assurances satisfactory to the Secretary of the Interior that the local cooperation authorized in subdivision (b) will be furnished by the state in connection with the flood control and fish, wildlife, and recreational enhancement features of the projects described in subdivision (a). Assurances provided pursuant to this subdivision may not be made until the local agency, by binding agreement with the Reclamation Board, has agreed to assume all obligations under Sections 12585 to 12585.5, inclusive, and Section 12642, or that may be required by amendment to Chapter 1 (commencing with Section 12570).

(f) The Colusa Basin Drainage District, or other appropriate local agency, shall establish and maintain a coordinated land use planning and decisionmaking process within the watershed to avoid unmitigated hydraulic impacts.

SEC. 4. Section 12684.2 is added to the Water Code, to read:

12684.2. (a) The project for flood control in the Los Angeles County Drainage Area (LACDA), known as the LACDA project, is adopted and authorized substantially in accordance with the approval of the Congress of the United States as indicated in, and the report of the Chief of Engineers dated June 30, 1992, and any supplement or addendum to that report that results from discussions between interested parties, as authorized by, Section 101(b) of the Water Resources Development Act of 1990 (Public Law 101-640), at an estimated cost to the state of the sum that may be appropriated by the Legislature for state cooperation, upon the recommendation and advice of the department, in an amount that may not exceed 60 percent of the nonfederal costs of the project.

(b) The authorization of the project is contingent upon the adoption by Los Angeles County of a plan to undertake restoration projects, including related habitat restoration and maintenance projects, along the entire length of the Los Angeles River and related tributaries and to increase parkland and recreational opportunities along that river. For the purposes of preparing and implementing the plan, the county shall consider the comments of the advisory committee convened pursuant to subdivision (c).

(c) The Secretary of the Resources Agency shall convene an advisory committee, comprised of experts and representatives of organizations involved in river restoration, habitat restoration, and community development relating to the Los Angeles River, to provide input to the secretary and the County of Los Angeles in the preparation and implementation of the plan.

(d) The authorization of the project is contingent upon a determination by the Secretary of the Resources Agency and the Los Angeles County Board of Supervisors, after a public hearing, that the project described in subdivision (a) is a multipurpose project that includes, in addition to flood control features, river restoration, wildlife and habitat restoration, or park and recreational features.

SEC. 16. Section 12684.4 is added to the Water Code, to read:

12684.4. The Los Angeles County Flood Control District shall give assurances satisfactory to the Secretary of the Army that the local cooperation required by the Water Resources Development Act of 1990 (Public Law 101-640), will be furnished by the district in connection with the project for flood control adopted and authorized in Section 12684.2.

SEC. 17. Section 12684.6 is added to the Water Code, to read:

12684.6. The Los Angeles County Flood Control District, in conjunction with the Department of the Army, shall carry out the plans and project described in Section 12684.2 and the district may make modifications and amendments to the plans as may be necessary to carry out the project for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

SEC. 18. Section 12684.8 is added to the Water Code, to read:

12684.8. The Secretary of the Resources Agency shall consult with appropriate federal agencies to assess the desirability, feasibility, and costs of modifying the flood control project described in Section 12684.2, in accordance with Section 2309a of Title 33 of the United States Code or other relevant law, to include multipurpose features designed to maximize river habitat restoration, parkland, and recreational opportunities consistent with flood control objectives. The secretary shall prepare and submit a report to the Legislature, not later than March 1, 2001, concerning the results of the consultation.

SEC. 19. Section 12706.3 is added to the Water Code, to read:

12706.3. (a) The project for flood control on the San Lorenzo River is adopted and authorized substantially in accordance with congressional approval and the final report of the Chief of Engineers dated June 30, 1994, as authorized by Section 101 (a) (5) of the Water Resources Development Act of 1996 (P.L. 104-303), as amended, at an estimated cost to the state of the sum that may be appropriated for state

cooperation by statute, upon the recommendation and advice of the department.

(b) The City of Santa Cruz shall give assurances satisfactory to the Secretary of the Army that the local cooperation required by that final report will be furnished by the city in connection with the project for flood control.

(c) (1) The City of Santa Cruz, in conjunction with the Department of the Army, shall carry out the project referred to in subdivision (a) and may make modifications and amendments to the plans as may be necessary to carry out the plans for the purposes of Chapter 1 (commencing with Section 12750) and this chapter.

(2) Notwithstanding Section 12639, if there are any major modifications or amendments to the plans that result in a substantial increase in the costs to the state for any estimated cost for the project, no money shall be reallocated by the state in aid of that portion of the project until the revised plans have been reviewed and approved by the department. The department shall approve the revised plans if the department determines that the benefits of the proposed works of improvement for the revised project will exceed the cost thereof and that the revised project appears to be the most economical project plan, considering construction costs, land costs, easements and rights-of-way costs, and operation and maintenance costs.

(d) State funding for the project is contingent on the provision of funds for that purpose in either the annual Budget Act or a general obligation bond act. Reimbursement of the state share of the nonfederal costs of the project shall be for those project costs incurred on or after October 12, 1996, the date on which the project was authorized by Congress, as set forth in Section 101(a)(5) of the Water Resources Development Act of 1996 (P.L. 104-303).

SEC. 20. Section 12721.5 is added to the Water Code, to read:

12721.5. (a) The project for flood control on the Santa Ana River at Norco Bluffs is adopted and authorized substantially in accordance with the final report of the Chief of Engineers of the United States Army Corps of Engineers dated December 23, 1996, as authorized by Section 101(b)(4) of the Water Resources Development Act of 1996 (P.L. 104-303), at an estimated cost to the state of the sum that may be appropriated for state cooperation by the Legislature, upon the recommendation and advice of the department.

(b) The Riverside County Flood Control and Water Conservation District shall give assurances satisfactory to the Secretary of the Army that the local cooperation required by the final report of the Chief of Engineers of the United States Army Corps of Engineers dated December 23, 1996, will be furnished by the district in connection with the project for flood control adopted and authorized in subdivision (a).

(c) The district, in conjunction with the Department of the Army, shall carry out the plans and project and may make modifications and amendments to the plans as may be necessary to carry out the plans for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

SEC. 21. Section 12721.7 is added to the Water Code, to read:

12721.7. (a) The project for habitat restoration at Gunnerson Pond is adopted and authorized substantially in accordance with the final project modification report of the Chief of Engineers of the United States Army Corps of Engineers dated October 1997, as authorized by Section 1135 of the Water Resources Development Act of 1986 (P.L. 99-662), and as previously authorized by Section 12750, at an estimated cost to the state of the sum that may be appropriated for state cooperation by the Legislature upon the recommendation and advice of the department, in an amount that may not exceed 60 percent of the nonfederal costs of the project. The department may pay 50 percent of the nonfederal capital costs of the recreation and fish and wildlife enhancement features of the project.

(b) The Riverside County Flood Control and Water Conservation District shall give assurances satisfactory to the Secretary of the Army that the local cooperation required by the project modification report of the Chief of Engineers of the United States Army Corps of Engineers dated October 1997 will be furnished by the district in connection with the project adopted and authorized in subdivision (a).

(c) The district, in conjunction with the Department of the Army, shall carry out the plans and project and may make modifications and amendments to the plans as may be necessary to carry out the plans for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

SEC. 22. Section 12721.8 is added to the Water Code, to read:

12721.8. Any local entity, for the purposes of carrying out a project authorized by Sections 12661.2, 12670.7, 12670.8, 12670.14, 12670.20, 12684.2, 12706.3, 12721.5, and 12721.5, may use, whenever feasible, the services of the California Conservation Corps and certified local conservation corps.

SEC. 23. 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 1072

An act to add Chapter 8.6 (commencing with Section 44260) to Part 5 of Division 26 of the Health and Safety Code, relating to air pollution, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2000. Filed with Secretary of State September 30, 2000.]

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

SECTION 1. Chapter 8.6 (commencing with Section 44260) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

CHAPTER 8.6. ZERO-EMISSION VEHICLE GRANTS

44260. The state board, in conjunction with the State Energy Resources Conservation and Development Commission, shall develop and administer a program to provide grants to individuals, local governments, state agencies, nonprofit organizations, and private businesses, to encourage the purchase or lease of a new zero-emission vehicle.

44261. (a) The maximum available grant for any qualified recipient, as determined by the state board, shall be an amount equal to 90 percent of the incremental cost above one thousand dollars ($1,000) of a new zero-emission light-duty car or truck eligible for the program.

(b) For the purposes of this chapter:

(1) ''Incremental cost'' means the amount determined by the State Energy Resources Conservation and Development Commission as the reasonable difference between the cost of the zero-emission vehicle and the cost of a comparable gasoline or diesel fueled vehicle.

(2) ''New zero-emission vehicle'' shall include previously leased vehicles that have been substantially upgraded, as determined by the state board, with new technologies, including, but not necessarily limited to, advanced batteries or power electronics.

44262. Grants made pursuant to this chapter shall be distributed in the following manner, in amounts as determined by the state board:

(a) Up to three thousand dollars ($3,000) of the available grant funds may be provided for the first 12-month period of the lease or purchase of the vehicle.

(b) Up to three thousand dollars ($3,000) of the remaining available grant funds may be provided for the second 12-month period of the lease or purchase of the vehicle.

(c) Up to three thousand dollars ($3,000) of the remaining available grant funds may be provided for the third 12-month period of the lease or purchase of the vehicle.

(d) No grant funds shall be provided following the third 12-month period of the lease or purchase of the vehicle.

44263. In order to be eligible to receive a grant under this chapter, a zero-emission vehicle shall meet all of the following criteria:

(a) Be purchased on or leased on or after October 1, 2000, and on or before December 31, 2002. For purposes of this subdivision, a vehicle shall be deemed to be leased on the date upon which the lease of the vehicle commences.

(b) Be registered with the Department of Motor Vehicles for use in this state.

(c) Meet all applicable federal and state safety standards, or, if the vehicle is to be utilized solely for a demonstration program, have received the applicable waivers from the National Highway Traffic Safety Administration.

(d) Be capable of operation on a freeway, as determined by the state board in conjunction with the State Energy Resources Conservation and Development Commission.

(e) Any other criteria established by the state board.

44265. (a) The grant program described in this chapter may be administered by a local air management district or air pollution control district on a voluntary basis, provided that the district administers the program based upon the guidelines developed by the state board in conjunction with the State Energy Resources Conservation and Development Commission pursuant to subdivision (b) of Section 44264.

(b) Any district that voluntarily administers this grant program is authorized to provide grants from its own funding sources in an amount of five hundred dollars ($500) to one thousand dollars ($1,000) or more per year for each qualified zero-emission vehicle registered within the boundaries of its territorial jurisdiction.

SEC. 2. The sum of eighteen million dollars five hundred thousand dollars ($18,500,000) is hereby appropriated from the General Fund to the State Air Resources Board for expenditure as follows:

(a) Eighteen million dollars ($18,000,000), without regard to fiscal year, to implement Chapter 8.6 (commencing with Section 44260) of Part 5 of Division 26 of the Health and Safety Code.

(b) Five hundred thousand dollars ($500,000) for grants for fiscal years 2000–01, 2001–02, and 2002–03 to air pollution control districts and air quality management districts.

(b) An air pollution control district or air quality management district that receives a grant under this section shall use these funds to offset the

incremental operating costs of alternative diesel fuel, as defined in subdivision (d), and as used in heavy-duty vehicles and equipment. For the purposes of this section, heavy-duty vehicles and equipment include, all of the following:

(1) On-road motor vehicles with a gross vehicle weight rating exceeding 14,000 pounds.

(2) Off-road equipment with engines that exceed 50 horsepower.

(3) Marine vessels.

(4) Locomotives.

(5) Stationary agricultural pump engines.

(6) Forklifts.

(7) Airport ground support equipment.

(c) Grants under this section shall be awarded only to air pollution control districts and air quality management districts that apply for funds under this section. These grants shall not be used to fund engine research and development, certification testing, training, or operational controls.

(d) As used in this section, ''alternative diesel fuel'' means a fuel emulsion that, when used in a conventional diesel engine, reduces oxides of nitrogen emissions by at least 10 percent and particulate matter emissions by at least 15 percent as compared to the 10-percent aromatic reference fuel as defined in subdivision (g) of Section 2282 of Title 13 of the California Code of Regulations. The emissions characteristics of any alternative diesel fuel shall be determined by the State Air Resources Board based on data submitted by the producer of the fuel in accordance with data and testing protocols specified by the State Air Resources Board. Alternative diesel fuel shall not increase toxic emissions and shall have hydrocarbon emissions that are at least 25 percent lower than the engine exhaust emissions standard.

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 achieve early introduction of zero-emission vehicle technologies for the purposes of meeting federal and state air quality standards as soon as possible and providing grants for alternative diesel fuel, it is necessary that this act take effect immediately.

CHAPTER 1073

An act to amend Sections 48800, 48800.5, 52201, and 76001 of the Education Code, relating to gifted and talented pupils.

[Approved by Governor September 30, 2000. Filed with
Secretary of State September 30, 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) Highly gifted and talented pupils, those whose measured intelligence quotient is 150 or more points, possess enormous potential for intellectual attainment, personal achievement, and social contribution.

(2) Because highly gifted and talented pupils are often assigned to elementary and secondary schools that are not equipped to offer them an appropriate education, their full potential may not be developed and they may experience an unsatisfactory adjustment to school that may cause them to lose interest, drop out, or even contemplate or commit suicide.

(3) The intelligence level of highly gifted and talented pupils obscures the fact that they are a special population with special needs.

(b) It is, therefore, the intent of the Legislature to enact legislation to ensure that all pupils, including highly gifted and talented pupils, receive a free and appropriate education. It is further the intent of the Legislature to enact legislation to increase the options available for providing services to highly gifted and talented pupils including an opportunity for highly gifted and talented pupils to attend classes in the public postsecondary institutions of this state.

SEC. 2. Section 48800 of the Education Code is amended to read:

48800. (a) The governing board of any school district may determine which pupils would benefit from advanced scholastic or vocational work. The intent of this section is to provide educational enrichment opportunities for a limited number of eligible pupils, rather than to reduce current course requirements of elementary and secondary schools. The governing board may authorize those pupils, upon recommendation of the principal of the school that the pupil attends, and with parental consent, to attend a community college as special part-time students and to undertake one or more courses of instruction offered at the community college level.

(b) If the governing board denies a request for a special part-time enrollment at a community college for a pupil who is identified as highly gifted, the board shall issue its written recommendation and the reasons for the denial within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) The students shall receive credit for community college courses that they complete at the level determined appropriate by the school district and community college district governing boards.

SEC. 3. Section 48800.5 of the Education Code is amended to read:

48800.5. (a) A parent or guardian of any pupil, regardless of the pupil's age or class level, may petition the governing board of the school district in which the pupil is enrolled to authorize the attendance of the pupil at a community college as a special full-time student on the ground that the pupil would benefit from advanced scholastic or vocational work that would thereby be available. If the governing board denies the petition, the pupil's parent or guardian may file an appeal with the county board of education, which shall render a final decision on the petition in writing within 30 days.

(b) If the governing board denies a request for a special full-time enrollment at a community college for a pupil who is identified as highly gifted, the board shall issue its written recommendation and the reasons for the denial within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) Any pupil who attends a community college as a special full-time student pursuant to this section is exempt from compulsory school attendance under Chapter 2 (commencing with Section 46100) of Part 26.

(d) A parent or guardian of a pupil who is not enrolled in a public school may directly petition the president of any community college to authorize the attendance of the pupil at the community college as a special part-time or full-time student on the ground that the pupil would benefit from advanced scholastic or vocational work that would thereby be available.

(e) Any pupil authorized to attend a community college as a special full-time student shall, nevertheless, be required to undertake courses of instruction of a scope and duration sufficient to satisfy the requirements of law.

(f) For purposes of allowances and apportionments from the State School Fund, a community college shall be credited with additional units of average daily attendance attributable to the attendance of special full-time students at the community college.

SEC. 4. Section 52201 of the Education Code is amended to read:

52201. (a) ''Gifted and talented pupil,'' as used in this chapter, means a pupil enrolled in a public elementary or secondary school of this state who is identified as possessing demonstrated or potential abilities that give evidence of high performance capability as defined pursuant to Section 52202.

(b) ''Highly gifted pupil'' means a gifted and talented pupil who has achieved a measured intelligence quotient of 150 or more points on an assessment of intelligence administered by qualified personnel or has demonstrated extraordinary aptitude and achievement in language arts, mathematics, science, or other academic subjects, as evaluated and confirmed by both the pupil's teacher and principal. Highly gifted pupils shall generally constitute not more than 1 percent of the pupil population.

(c) ''Program'' means an appropriately differentiated curriculum provided by a district for gifted and talented pupils which meets the standards established pursuant to this chapter, and also includes the identification of these pupils.

(d) ''Participating pupil'' means a pupil identified as a gifted and talented pupil who takes part in a program for at least one semester of a school year.

SEC. 5. Section 76001 of the Education Code is amended to read:

76001. (a) The governing board of a community college district may admit to any community college under its jurisdiction as a special part-time student any student who is eligible to attend community college pursuant to Section 48800.

(b) If the governing board denies a request for a special part-time enrollment at a community college for a pupil who is identified as highly gifted, the board shall record its findings and the reasons for denial of the request in writing within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) The attendance of a pupil at community college as a special part-time student pursuant to this section is authorized attendance, for which the community college shall be credited or reimbursed pursuant to Section 48802. Credit for courses completed shall be at the level determined to be appropriate by the school district and community college district governing boards.

(d) For purposes of this section, a special part-time student may enroll in up to, and including, 12 units per semester, or the equivalent thereof, at the community college.

(e) The governing board of a community college district may admit to any community college under its jurisdiction as a special full-time student any pupil who is eligible to attend community college pursuant to Section 48800.5, and who, in the opinion of the college president, could benefit from the course or class.

(f) If the governing board denies a request for a special full-time enrollment for a pupil who is identified as highly gifted, the board shall record its findings and the reasons for denial of the request in writing within 60 days. The written recommendation and denial shall be issued

at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(g) The attendance of a pupil at a community college as a special full-time student pursuant to this section is authorized attendance, for which the community college shall be credited pursuant to Section 48800.5.

(h) The governing board of a community college district may admit to the summer session of any community college under its jurisdiction as a special student any student, with parental consent:

(1) Whose admission to summer session is recommended by the principal of the school which the student attends.

(2) Who has demonstrated adequate preparation in the discipline to be studied.

(3) Who has availed himself or herself of all opportunities to enroll in an equivalent course at his or her school of attendance.

(i) A principal may recommend a pupil as a special student pursuant to rules and regulations that may be adopted by the governing board of the school district. The principal of a school shall not recommend a number of pupils who have completed a particular grade in excess of 5 percent of the total number of pupils in the school who have completed that grade immediately prior to the time of recommendation.

(j) The attendance of a special summer session student at a community college pursuant to this section shall be credited to the district maintaining the community college for the purposes of allowances and apportionments from the State School Fund. The student shall receive credit for community college courses that he or she completes, in a manner determined to be appropriate by the governing boards of the school district and the community college district.

(k) Subdivisions (a) to (g), inclusive, and Sections 48800 to 48802, inclusive, do not apply to the special students authorized to be admitted to a community college summer session pursuant to this section.

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.